STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stanislawa Mlynarczk,
Petitioner,

vs.

NO: 08 WC 01595
(11 IWCC 0747)
(11 MR 766)
(3-12-0411 WC)

Sophie Obrochta d/b/a Janitorial By Sophie,
Respondent.

14IWCC0261

DECISION AND OPINION ON APPELLATE COURT REMAND

This matter comes before the Commission on Remand from the Appellate Court of Illinois, Third Judicial District. The Appellate Court's Order, entered May 30, 2013, reverses the Decision of the Circuit Court of Will County confirming the July 29, 2011 Decision of the Commission and remands the case to the Commission for reinstatement of the Decision of the Arbitrator with instructions to address the propriety of the Arbitrator's imposition of attorney fees and penalties pursuant to Sections 16, 19(k) and 19(l) of the Act.

In his Decision of January 26, 2010, Arbitrator Hennessey found Petitioner proved she sustained an accident on December 5, 2007 arising out of and in the course of her employment with Respondent, Sophie Obrochta d/b/a Janitorial by Sophie. The Arbitrator found Petitioner was a "traveling employee" and therefore was entitled to benefits under the Workers' Compensation Act for injuries she sustained while walking to a vehicle used to transport her to work. The Appellate Court agreed with the findings of the Arbitrator.

The Arbitrator ordered Respondent to pay the Petitioner temporary total disability benefits of $274.12/week for 54 weeks for the period December 6, 2007 through December 17, 2008 and the further sum of $34,818.91 for necessary medical services, as provided in Section 8 of the Act. The Respondent was further ordered to pay the Petitioner the sum of $246.71/week for a further period of 133.25 weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained caused 65% loss of use of the left hand/wrist.

On remand and pursuant to the Appellate Court's ruling and mandate, the Commission vacates its prior Decision of July 29, 2011 and hereby affirms and adopts the January 26, 2010 Decision of the Arbitrator with respect to all issues less penalties and attorneys' fees as provided in Sections 19(k), 19(l) and 16 of the Act.

The Commission, pursuant to the instructions of the Appellate Court, reviews the record as a whole and addresses the propriety of the Arbitrator's imposition of attorneys' fees and penalties pursuant to Sections 16, 19(k) and 19(l) of the Act. The Arbitrator imposed penalties and fees upon the Respondent as "the facts in this case are for the most part undisputed." The Arbitrator found that the testimony of the Petitioner and her husband was credible, clear and consistent unlike the testimony of Walter Obrachta, the husband of Sophie Obrachta. The Arbitrator stated, "because of the facts, the Respondent's refusal to pay temporary total disability benefits is unreasonable, vexatious and the defenses raised are frivolous."

The Commission finds Respondent was not unreasonable in requiring Petitioner to establish her prima facie case given the facts as presented. The evidence shows there was a genuine controversy as to whether Petitioner sustained an accident that arose out of and in the course of employment for Respondent. Respondent filed a Response to Petitioner's Petition for Penalties and Attorneys' Fees on September 30, 2009 which outlined its reasoning for denial of benefits. The Commission finds Respondent's conduct in defense of this claim was neither unreasonable nor vexatious as there were legitimate issues in dispute, including a compensable accident, despite the ultimate outcome of the case. The Commission vacates the Arbitrator's award of penalties as provided in Section 19(k) and 19(l) of the Act and attorneys fees as provided in Section 16 of the Act. Penalties and fees are denied.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 26, 2010 is hereby affirmed and adopted with respect to all issues less Section M, penalties and fees. The Commission vacates the Arbitrator's award of penalties as provided in Section 19(k) and 19(l) of the Act and attorneys fees as provided in Section 16 of the Act. Penalties and fees are denied.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay the Petitioner temporary total disability benefits of $272.12 per week for 54 weeks, for the period December 6, 2007 through December 17, 2008, that being the period of temporary total incapacity from work under Section 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall pay the Petitioner the sum of $246.71 per week for a further period of 133.25 weeks, as provided in Section 8(e)9 of the Act, because the injuries sustained caused 65% loss of use of the left hand.

14IWCC0261

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $34,818.91 for medical expenses pursuant to Section 8 and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's request for penalties and fees pursuant to Sections 19(k), 19(l) and 16 is denied.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 7 2014

Daniel R. Donohoo

Ruth W. White

Charles J. DeVriendt

o-03/25/14
drd/adc
68

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Causal Connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Janice M. Farrell,

Petitioner,

vs.

NO: 12 WC 26689

14IWCC0262

Noodles & Company,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection and prospective medical treatment and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below and remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

Petitioner, a 50-year-old general manager, filed an Application for Adjustment of Claim alleging injuries to her right and left shoulders occurring during the course of and arising out of her employment by Respondent on January 24, 2012. Petitioner testified that on January 24, 2012 she was carrying a tub weighing thirty to thirty-five pounds when suddenly her left shoulder popped and she felt immediate pain. Respondent does not dispute that Petitioner sustained a compensable left shoulder injury. Petitioner initially treated at Physicians Immediate Care and was diagnosed with a left shoulder strain. She was issued lifting restrictions from Physician's Immediate Care and allowed to return to work, although Petitioner testified that she actually returned to her regular duties in order to perform her job as a general manager. (PX 1; T. 13-14) An MRI of the left shoulder revealed degenerative changes and tendinosis. Petitioner was

examined by Dr. Shah at Parkview Orthopaedics on March 12, 2012 for a second opinion. Dr. Shah believed that the MRI showed a rotator cuff tear. (PX 2) While performing physical therapy exercises on April 4, 2012, Petitioner complained that her right shoulder was becoming sore from work. (PX 3) Petitioner underwent a left shoulder arthroscopic rotator cuff repair on May 15, 2012 by Dr. Shah. (PX 2) Petitioner was off of work for six weeks and then returned work performing modified duties. She continued to complain to the physical therapist and to Dr. Shah that her right shoulder was bothering her while she compensated for her left arm. An MRI arthrogram on January 31, 2013 revealed a rotator cuff tear in Petitioner's right shoulder. Petitioner sought authorization for arthroscopic surgery recommended by Dr. Shah. (PX 2, PX 4)

Petitioner was examined by Dr. Tonino at Loyola University at the request of the Respondent and pursuant to §12. Dr. Tonino opined that Petitioner did not injure her right shoulder on January 24, 2012 and did not subsequently injure her right arm as a result of overuse following the left shoulder injury. At the 19(b) hearing, Petitioner admitted that her right arm pain and symptoms did not begin until April of 2012. She testified that her right shoulder became increasingly painful while using it to compensate for the left arm. Area manager Laura Kraus testified for Respondent. Ms. Kraus was aware that Petitioner injured her left shoulder on January 24, 2012 but she was not aware that Petitioner was alleging an overuse injury to her right shoulder. Approximately around the time of Petitioner's left shoulder surgery, Petitioner informed Ms. Kraus that she was seeking workers' compensation approval for a right shoulder MRI. (T. 49)

In a June 17, 2013 Decision, the Arbitrator found that Petitioner failed to prove she sustained an accidental injury to her right shoulder on January 24, 2012 or an overuse injury to her right shoulder as a result of her undisputed left shoulder injury. We disagree, and for the following reasons we reverse and award benefits.

Although Petitioner was placed on light duty restrictions for her left arm soon after the accident, she did not miss any time from work and she testified that she still needed to perform all of her regular job duties. She testified that she relied upon her dominant right arm in order to baby her left arm. (T. 13-14) Petitioner had pre-existing arthritis in both shoulders and multiple other areas of her body. She testified that she had a prior injury to her right shoulder in 2005 when a box of cups fell onto her right shoulder, but she did not miss any work and did not file a claim for that injury. She recalled that she had one medical visit, but there are no corresponding records in evidence. (T. 10-11) As Petitioner admitted, her right shoulder symptoms arose in the months following the January 24, 2012, and her testimony is consistent with the treatment records in evidence. Petitioner's surgeon, Dr. Shah, opined that Petitioner developed a right shoulder overuse injury related to the accident because "initially she had the work injury on the left side and as she started using her right side more at work and in therapy that started to cause pain on the right side." A right shoulder arthrogram showed a full thickness rotator cuff tear and degenerative changes, similar to the left shoulder. Dr. Shah recommended right shoulder surgery and opined that the need for surgery was causally related to the January 24, 2012 accident. (PX 2; PX 4)

The Arbitrator's Decision, relying on the opinion of Dr. Tonino, is not supported by the preponderance of the credible evidence. Dr. Tonino's reports with respect to causation are not persuasive because he was not provided with all of the information needed to form a reliable causal connection opinion and his opinion appears to be biased by incomplete or misleading facts. In Dr. Tonino's first report, dated October 22, 2012, he stated that no records were received that corresponded to the Petitioner's first month of treatment after the accident. He agreed with Dr. Shah's diagnosis and his treatment plan for the right shoulder, but he stated that he could not offer a causal connection opinion due to the lack of complete information. (RX 1) Dr. Tonino wrote an addendum report, purporting to have been issued the same day, stating that additional records had been obtained and that his opinion remained unchanged. He stated that his opinion was partially based on the absence of any right shoulder complaints in the records for the time period following the accident. (RX 2) Therefore, it does not appear that Dr. Tonino ever obtained the physical therapy records reporting right shoulder complaints beginning in April of 2012 with the performance of Petitioner's work duties. In a final addendum report dated January 18, 2012, Dr. Tonino stated that updated records he received indicate that Petitioner's right shoulder complaints started when "she was accidentally struck in the ribs and fell onto her right elbow" around "5/15/12." Dr. Tonino reviewed a "light-duty job description" and understood that Petitioner performed "mostly administrative-type procedures," involving sedentary work and no lifting over ten pounds. Dr. Tonino stated that he would prefer to see a video of Petitioner's job performance if possible, but he concluded from the information available to him that Petitioner's work did not consist of the "typical activities that would require overuse of the contralateral upper extremity." (RX 3)

The Arbitrator relied on Dr. Tonino's opinion that modified duties could not have caused overuse of the right shoulder as alleged by Petitioner. However, Petitioner testified that Dr. Tonino's understanding of her post-accident work duties was completely incorrect; she strongly disputed any of her duties changed until she returned to work post-operatively with specifically modified duties. (T. 30) Petitioner's testimony is not rebutted; it was instead corroborated by the testimony of Laura Kraus. Ms. Kraus oversaw nine stores and did not have daily interaction with Ms. Farrell but understood her to be a good worker. (T. 50-51) Ms. Kraus agreed that the job duties of a general manager include setting up, prepping food, cleaning, delivering food, waiting on guests, carrying produce and cooked noodles, and stocking and lifting boxes. Ms. Kraus was only aware of Petitioner being on light duty status after her left shoulder surgery and at no time previously. (T. 52) Ms. Kraus believed that while recovering from left shoulder surgery, Petitioner was provided with modified duties consisting of administration, scheduling, marketing, phone calls, ordering, entering invoices, greeting, hosting, light cashier duty and modified work hours. (T. 48-49)

As stated above, Dr. Tonino concluded that Petitioner appeared to have injured her right shoulder outside of work in the summer of 2012 due to a reference in the physical therapy records from August 6, 2012 (Dr. Tonino's report bears the apparent typographical error "5/15/12") reporting that Petitioner had recently been injured at a party. She presented to the physical therapy session with a right elbow bruise and complaints of right-sided rib pain. (PX 4)

14IWCC0262

Dr. Tonino's conclusion that this incident caused the onset of Petitioner's right shoulder complaints is not supported by the preponderance of the evidence and is directly contradicted by the prior physical therapy records, the records of Dr. Shah and Petitioner's testimony.

After reviewing all of the evidence, we find Petitioner to be credible and we award the right shoulder surgery recommended by Dr. Shah as reasonably necessary medical treatment for the overuse injury sustained by Petitioner as a result of the January 24, 2012 accident.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 17, 2013 is hereby reversed and the Petitioner is awarded the requested prospective medical treatment consisting of a right shoulder surgery recommended by Dr. Shah. Furthermore, this case is remanded to the Arbitrator for a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to *Thomas v. Industrial Commission*, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 7 - 2014
RWW/plv
o-2/19/14
46

Ruth W. White

Charles J. DeVriendt

Michael J. Brennan

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Todd Brooks,
Petitioner,

vs. NO: 11 WC 14017

State Of Illinois,
Chester Mental Health Center.
Respondent.

14IWCC0263

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, permanent partial disability and prospective medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 29, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

14IWCC0263

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: APR 0 7 2014

Ruth W. White

Daniel R. Donohoo

Charles J. DeVriendt

o-03/26/14
rww/wj
68

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

BROOKS, TODD
Employee/Petitioner

Case# **11WC014017**

SOI/CHESTER MHC
Employer/Respondent

14IWCC0263

On 5/29/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

1745 DEPT OF HUMAN SERVICES
BUREAU OF RISK MANAGEMENT
PO BOX 19208
SPRINGFIELD, IL 62794-9208

0558 ASSISTANT ATTORNEY GENERAL
KENTON J OWENS
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PKWY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

MAY 29 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

TODD BROOKS
Employee/Petitioner

v.

SOI/CHESTER MHC
Employer/Respondent

Case # 11 WC 14017

Consolidated cases: ___

14IWCC0263

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Collinsville**, on **March 27, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

14IWCC0263

FINDINGS

On the date of accident, **02/28/11**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was not* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned $**69,182.88**; the average weekly wage was $**1,330.44**

On the date of accident, Petitioner was **45** years of age, ***single*** with **0** dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit of $ **if any** under Section 8(j) of the Act.

ORDER

No benefits are awarded.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

5/23/13
Date

ICArbDec19(b)

MAY 29 2013

14IWCC0263

Findings of Fact

This is a 19(b) decision on a repetitive trauma claim. The issues in dispute are accident, notice, causation and prospective medical care.

Petitioner is a 47 year old employee of the State of Illinois at the Chester Mental Health Center. Petitioner began working at Menard in June 1994. Petitioner worked as a Security Therapy Aide (STA) I from until 1994 until 2003. From 2003-2004 Petitioner was a STA II. Beginning in August 2004 Petitioner began working as a STA IV.

On March 2, 2011, Petitioner completed his employee notice of injury. (Px. 6) On said form Petitioner stated that he unlocked and locked doors, restrained patients and wrote reports as a STA I; as a STA II Petitioner wrote he unlocked and locked doors, assist in forcible leather restraint, excessive writing; as a STA III Petitioner wrote that he locked and unlocked doors, excessive writing . . .; as a STA IV Petitioner wrote that he locked and unlocked doors, typing on computer. (Px. 6)

Petitioner was a STA IV from August 2004 until present. A STA IV ensures STAs are assigned to work each unit for a shift, monitors compliance of staff with security procedures. (Rx. 2A)

A report indicating the demands of the job was completed by Patricia Mosbacher and Mike Brown. (Rx. 1A) Ms. Mosbacher was the hospital administrator for Chester Mental Health Facility at the time of Petitioner's alleged date of injury. (Px. 7) Mike Brown was a STA IV at Chester Mental Health Facility. The demands of the job noted most of the doors of the facility were operated by a badge entry system and that the badge entry system was installed in 1996. (Id.) It was also noted that the office doors utilized by Petitioner were only unlocked on one side and lock automatically when closed. (Id.) Further, the computer information is cut and pasted, very little typing is required. (Id.) The doors at the facility utilize a key the same size as a house key. (Id.) For comparison it was stated that the same type of motion is used to lock and unlock a house door or start a car or texting on a phone. (Id.) Finally it was noted that Petitioner's duties were not repetitive nor without periods of rest. (Id.)

Petitioner was examined by Dr. James Emanuel pursuant to Section 12 at the request of Respondent. (Rx. 2, Rx. 6) Dr. Emanual reviewed the DVD of a STA IV (Rx. 3), the Job Site Analysis (Rx. 1), Employee's Notice of Injury (Px. 6) and the CMS Demands of the Job (Px. 2A) Dr. Emanual noted that Petitioner was obese as Petitioner has a BMI of 41.61. (Rx. 2) Dr. Emanual noted Petitioner was an avid weightlifter. Dr. Emanual testified that he did not feel Petitioner's carpal tunnel diagnosis was related to or aggravated by Petitioner's job duties. Dr. Emanual noted that Petitioner's hobby of weight lifting could cause his carpal tunnel syndrome.

Petitioner was referred to Dr. George Paletta by his attorney, Thomas C. Rich. Petitioner was examined by Dr. Paletta on May 6, 2011. At that visit it was noted that Petitioner "has to use keys to open cell doors" (Px. 5) On cross examination Dr. Paletta did not know what types of keys Petitioner used to open doors. (Px. 7, pg. 28) Also, Dr. Paletta did not know whether or not a swipe card system was used at Chester Mental Health Center. (Px. 7, pg. 28) Dr. Paletta agreed that if the majority of keying was done with a swipe care, his opinion could change as to whether opening cells and doors played a role in Petitioner's carpal tunnel syndrome. (Id.) Dr. Paletta agreed that Petitioner's computer work did not have any effect on Petitioner's carpal tunnel syndrome. (Id., pg. 29)

Conclusions of Law

1. Regarding the issue of Accident, the Arbitrator finds that the Petitioner failed to meet his burden of proof. This finding is based primarily on the question of credibility. In this case, the Petitioner's description of his job duties, particularly in terms of the repetitive nature of each activity, are rebutted by the evidence presented by Respondent. For example, the Petitioner testified that he was involved in restraining tens of thousands of patients, yet he evidence shows that he holds a supervisory position in which he has other employees actually doing the restraining. Petitioner also highlighted in his testimony the use of keys to lock and unlock doors, yet Respondent's facility uses a key card system. In viewing the evidence regarding the Petitioner's job description as STA IV and comparing this evidence to Petitioner's own testimony, it is clear that the Petitioner's job duties for what he described as the roll of hospital administrator, vary throughout the day. Petitioner attempts to cast a wide net by referencing his earlier jobs for the Respondent as STA I, STA II, and STA III to prove his repetitive trauma claim. However, simply performing work over a period of years is not legally sufficient to prove that work is repetitive enough to cause an increased risk to the petitioner. In cases relying on the repetitive trauma concept, the petitioner must show the injury arose out of and in the course of his employment and was not the result of a normal degenerative aging process. See, e.g., *Peoria County Bellwood*, 115 Ill.2d 524 (1987); *Quaker Oats Co.* v. *Industrial Commission*, 414 Ill.2d 326 (1953). In the case at bar, there are a number of factors presented by the evidence that would attribute Petitioner's condition to factors outside his employment, including his obesity and his weight lifting activities.

2. Regarding the issue of Causation, the Arbitrator also finds that the Petitioner failed to meet his burden of proof. A claimant fails to prove a causal relationship through repetitive trauma where the medical opinion upon which they have relied is based upon incorrect or incomplete information about the claimant's job duties. See, e.g., *Lon Dale Beasley* v. *Decatur Public School* #61, 03 IIC 301; *Jerry Wiser v. American Steel Foundries*. 02 HC 310; *Vicki Staley v. BroMenn Lind Medical Hills Internists*, 99 IIC 539. The Commission has determined a claimant fails to prove causation from repetitive trauma when the treating physician testified repetitive motions caused the injuries but failed to detail what repetitive motions the petitioner engaged in and the frequency of the motions. *Gambrel* v. *Mulay Plastics*, 97 IIC 238. The Commission decision Clay v. Hill Correctional Center, 11 I.W.C.C. 0038, is instructive to this case. In Clay, the Commission noted that testimony of locking and unlocking hundreds of doors was unpersuasive testimony to show that those job duties aggravate carpal tunnel syndrome when there is no mention of the force required to do these activities. (Id.) Likewise, in this case there is no testimony about the force to perform any of the activities listed by Petitioner. Viewing the evidence of Petitioner's job duties, the reports and testimony of Dr. James Emanual, the testimony of Dr. Paletta, Petitioner has failed to meet his burden of proof that he sustained an accidental injury in the course of his employment for Respondent.

3. Based on the findings above, all other issues are rendered moot.

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
x None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Gregory Dehaven
Employee/Petitioner

v.

Suro, Inc.
Employer/Respondent

Case # 12 WC 031299

Consolidated cases: _____

14IWCC0264

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Douglas McCarthy, Arbitrator of the Commission, in the city of Springfield, on 5/7/2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

DeHAVEN, GREGORY
Employee/Petitioner

Case# **12WC031299**

14IWCC0264

SURO INC
Employer/Respondent

On 6/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0874 FREDERICK HAGLE FRANK & WALSH
JEFFREY D FREDERICK
129 W MAIN ST
URBANA, IL 61801

2593 GANAN & SHAPIRO PC
TIM STEIL
411 HAMILTON BLVD SUITE 1006
PEORIA, IL 61602

14IWCC0264

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $3,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 7 2014

Ruth W. White

Daniel R. Donohoo

Charles J. DeVriendt

o-03/26/14
rww/wj
46

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gregory DeHaven,
Petitioner,

vs. NO. 12 WC 31299

Suro, Inc.,
Respondent.

14IWCC0264

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering, the issues of temporary total disability, medical expenses, and prospective medical expenses and being advised of the facts and law affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on June 5, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

FINDINGS

On the date of accident, **1/29/2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned $**14,134.40**; the average weekly wage was $**275.60**.

On the date of accident, Petitioner was **55** years of age, ***single*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent has not paid TTD from the period of 7/18/12 through 10/8/12.

Respondent has refused to pay for further medical treatment to Petitioner as recommended by Dr. Fletcher.

ORDER

Pursuant to Section 8(a) of the Illinois Workers' Compensation Act, the Respondent, Suro, Inc., is hereby ordered to authorize and pay for the further medical treatment, of physical therapy modalities, a myelogram/postmyelogram scan, prescription medication, a TENS unit, recommended by Dr. Fletcher, plus all costs of reasonable and necessary further medical treatment after a diagnosis can be clarified.

Respondent is ordered to pay, pursuant to the Illinois Workers' Compensation Act the Carle Foundation Physician Group bill of $185.00, Carle Physician Services bill of $105.00, Safeworks Illinois bill of $786.33, 217 Rehab and Performance Center bills of 121.87, and MedSource bill of $171.00. Respondent's liability is limited to amounts set forth in the medical fee schedule. Respondent is ordered to repay Petitioner the amount of $595.00 for a bill Petitioner paid Dr. Paunicka out of his own pocket.

Respondent shall pay Petitioner temporary total disability benefits of $220.00 per week for 12 weeks, commencing 7/14/12 through 10/8/12, as provided in Section 8(b) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

D. [illegible]
Signature of Arbitrator
ICArbDec19(b)

May 30, 2013
Date

JUN - 5 2013

FINDING OF FACTS

Petitioner testified he had been employed by Suro, Inc. for less than two years. Petitioner testified that at the time of his injury he was employed by Suro, Inc. Petitioner's job duties at Suro, Inc. included performing janitorial functions. Petitioner testified that just shortly after 2006 up until his on the job accident of 1/29/12 he had no back pain. Petitioner testified that on January 29, 2012, while on the job, he slipped on black ice in a parking lot while carrying cleaning supplies in one hand and a vacuum in his other hand. Petitioner testified that having these items in his hands caused him to land awkwardly when he fell. Petitioner testified this accident occurred within the course of his employment. Petitioner testified he reported it to Robin Stout, a supervisor at his work on 1/29/12. Petitioner testified he reported to work the next day but was in too much pain to work. At that time another supervisor, Susan Stout, instructed him to go to Carle Occupational Medicine for treatment of his injury of 1/29/12. Petitioner testified he has had no new injuries to his back since January 29, 2012.

Petitioner testified that as a result of his on the job injury he followed the instructions of his supervisor and sought treatment at Carle Occupational Medicine on 1/30/12. There Petitioner treated with Dr. William Scott. Dr. Scott notes, in his 1/30/12 record, that Petitioner was being seen after falling in the parking lot and landing on his back. Dr. Scott noted pain in all three areas of the spine, diagnosed osteoarthritis and placed restrictions of avoiding lifting, pulling, and pushing greater than 15 pounds, to avoid repetitive bending or squatting, and to sit, stand, and walk as needed. Petitioner was given a Torodal injection to help with his pain and discomfort. Petitioner was told to follow up with Steven Jacobs, a physician's assistant. PE 3, p 17 and 18.

In Petitioner's follow up visit on 2/6/12 he was diagnosed with a back strain, cervicalgia, and a contusion of the hip as a result of his January 29, 2012 fall at work. Petitioner was taking Vicodin for his pain. PE 3, p 18 and 19. Steve Jacobs, PA, noted Petitioner had pain his the sacroiliac joint. He noted Petitioner had point tenderness in the gluteal region as well as over the hip on the right side. At this time Petitioner still had restrictions of no lifting, pulling, or pushing over 15 pounds. Steve Jacobs recommended Petitioner avoid kneeling or squatting and to get up to stretch every 20 to 30 minutes. Physical therapy was also recommended. PE 3, p 22.

The Arbitrator notes Petitioner still had restrictions of no lifting, pulling, or pushing over 20 pounds after his 2/23/2012 visit with Dr. Sutter. Hypertonicity, or enlargement of the lower lumbar muscles was noted. At this time Petitioner was to avoid bending and twisting of the neck and waist along with kneeling and squatting. PE 3, p 26 and 27.

Dr. Sutter noted, in his record of March 15, 2012 Petitioner's condition had not improved in 47 days. At this time Dr. Sutter recommended an MRI and put Petitioner on a fifteen pound weight restriction. PE 3, p 32.

Dr. Sutter noted Petitioner's MRI objectively showed an annular tear at L3-L4. He also said that it showed no central canal or foraminal stenosis, with an impression of minimal lower lumbar degenerative disc disease. After his evaluation of Petitioner on March 29, 2012, Dr. Sutter

recommended Petitioner stop therapy and allow his back to heal with rest. At this time Dr. Sutter lowered Petitioner's restrictions to not lifting, pushing, or pulling anything over 10 pounds. PX 3, p 36.

The radiologist who performed the MRI, Dr. Muzaffar, also noted no stenosis. He also found mild bulging at L3-4 with a small annular tear and subtle disc bulges at L4-5 and L5-S1. (PX 3)

In his evaluation of Petitioner on April 19, 2012 Dr. Sutter noted Petitioner was not getting better. On exam, he had trouble touching his toes. Dr. Sutter referred Petitioner to the Carle Spine Center. At the Carle Spine Center Petitioner saw Dr. Olivero, a spine surgeon, on May 8, 2012. Dr. Olivero noted, in his record, he was seeing Petitioner due to back pain that came on immediately after a fall at work during the winter, in which Petitioner struck his back. On that date Dr. Olivero noted Petitioner had a decreased range of motion in his back. Dr. Olivero diagnosed Petitioner with a back strain. He noted Petitioner had pain in his back and hips. In this visit Dr. Olivero did not recommend back surgery. Dr. Olivero recommended Petitioner try chiropractic, massage therapy or acupuncture. PE 3, p 46.

Petitioner followed up with Dr. Sutter on May 15, 2012. At this time Dr. Sutter had Petitioner on a 15 pound weight restriction. PE 3, p 52. Dr. Sutter noted Petitioner had been experiencing back pain for 129 days. Dr. Sutter moved Petitioner to a ten pound weight restriction and told Petitioner to avoid any bending or twisting his back. At this time Dr. Sutter noted Petitioner's MRI on March 27, 2012 showed bulges at L4-L5 and an annular tear at L3-L4. PE 3, p 56 & 57. He recommended the petitioner try deep tissue massage.

On June 5, 2012 Petitioner again saw Dr. Sutter for treatment of his back pain from his at work accident. At this point Dr. Sutter put Petitioner on a 10 pound weight restriction. PE 3, p 63. He noted that physical therapy had not helped his symptoms, which remained localized lower lumbar paraspinal pain which was not radiating. He recommended an IME. (PX3)

On July 18, 2012 Respondent sent Petitioner to an Independent Medical Exam with Dr. Monaco. Petitioner testified all Dr. Monaco had him do during his examination was lay flat, stand, a little bending and twisting, and walk. In his report he notes Petitioner had been in good general health prior to the accident of 1/29/12. The Petitioner complained of pain in the same areas which had bothered him since his accident. Dr. Monaco on exam noted discomfort in all ranges of motion of the lumbar spine. He also reviewed the MRI films and noted no central canal or foraminal stenosis. He suggested symptom magnification. He diagnosed acute sprains to the cervical and lumbar spine, but said that the Petitioner had recovered from the effects of those injuries. He opined that the Petitioner's current complaints were not causallypain. Dr. Monaco also reports Petitioner has reached maximum medical improvement then immediately states "there has been no evidence of improvement over the course of the last five months." Respondent's Exhibit 1.

Petitioner testified his employer, Suro, Inc. was unable to accommodate the restrictions he was given from Carle, the Respondent's own doctors. Petitioner testified he received temporary total

disability benefits up until 7/13/12 when Respondent terminated his benefits after the exam of Dr. Monaco.

Petitioner testified he took Dr. Olivero's advice and contacted Dr. Paunicka to make an appointment. Petitioner began treating with Dr. Paunicka on August 29, 2012. Because Respondent had refused to pay any more medical bills after the IME with Dr. Monaco, Petitioner had to pay Dr. Paunicka himself, for treatment.

On August 29, 2012 Petitioner saw Dr. Paunicka who noted that since Petitioner's January 29, 2012, accident of slipping on ice at work and injury his back, Petitioner has had problems with leaning, stooping, squatting, climbing, kneeling, bending, twisting, carrying, lifting, pushing, and restful sleeping. At this point Dr. Sutter had still not lifted Petitioner's 10 pound weight restrictions he put in place on June 5, 2012. Dr. Paunicka never removed these restrictions. Dr. Paunicka noted Petitioner has struggled getting to sleep as a result of the accident. Dr. Paunicka also noted that Petitioner wakes up in the middle of the night due to pain in his lower back. Dr. Paunicka noted Petitioner had no prior problems sleeping before the accident. In this visit Dr. Paunicka further noted there was tenderness to digital palpation and muscle tension on both sides of Petitioner's lumbar spine. PE 4, p 1.

In this August 29, 2012 visit Dr. Paunicka took x-rays of Petitioner's lumbar spine. Dr. Paunicka notes Petitioner's pain came on immediately after the accident and has not improved since. PE 4, p 1. He noted subluxations at L5 and sacrum sacroiliac joint on the right. After his initial consultation and review of the x-rays Dr. Paunicka diagnosed Petitioner with subluxation to the sacrum, a sprain/strain of the sacrum, subluxation lumbar region, lumbago, subluxation to the sacroiliac joint. Dr. Paunicka inititial prognosis for Petitioner was guarded. PE 4, p 3 and 4.

The Petitioner saw Dr. Paunicka for a total of nine visits through October 26, 2012. Throughout his treatment Dr. Paunicka noted Petitioner had pain, a restricted range of motion, myospasms and tenderness to digital palpation in his lumbar spine. In Petitioner's October 26, 2012 visit Dr. Paunicka noted Petitioner still required further rehabilitative care. Dr. Paunicka believed Petitioner would benefit from aquatic therapy. Dr. Paunicka took Petitioner completely off of work from a period of September 5 through September 17. PE 4 p. 13. The Petitioner testified that the treatment provided very little relief of his symptoms.

Petitioner's pain continued so on 12/10/12 he saw Dr. Fletcher. Dr. Fletcher notes Petitioner's symptoms first began to develop after a fall when leaving one of his cleaning accounts on 1/29/12. Dr. Fletcher noted Petitioner's pain level when he first fell was an 8 and Petitioner's pain level is now a 6 or 7. In his examination, Dr. Fletcher noted no muscle spasm, tenderness or swelling. He did find decreased ranges of motion of the lumbar spine, and a negative straight leg raising test, indicative of no nerve root involvement. He also found no evidence of symptom magnification. Dr. Fletcher recommended a Myelogram/CT examination to clarify his diagnosis followed by a course of physical therapy once the results were noted. Dr. Fletcher's prognosis of Petitioner was guarded due to the need for additional testing. Dr. Fletcher noted Petitioner had incurred a permanent loss. Pe 5, p 4.

The next visit Petitioner had with Dr. Fletcher was on February 6, 2013. At this time Dr. Fletcher noted Petitioner was complaining of an aching, stabbing pain in his lower back and hip area. Dr. Fletcher expressed a concern that Petitioner had spinal stenosis aggravated by his injury at work on 1/29/12. Dr. Fletcher still recommended Petitioner have a myelogram/postmyelogram CT scan to clarify his diagnosis. He also recommended that the Petitioner start pool therapy, use a TENS unit and take Ultram. (PX 5) He has not seen the Petitioner since that visit. The Petitioner is seeking authorization for the treatment prescribed by Dr. Fletcher, and he has been using a TENS. (PX 11)

Petitioner testified he still participates in pool therapy and does daily stretching to help alleviate his severe pain from the accident. Petitioner testified he is currently taking Torodal due to his pain from the accident. Petitioner testified since the accident he has had severe pain in his back area ranging around a 7 out of 10. Petitioner testified this pain has changed many of the things he does and things he is able to do. Petitioner testified he is can no longer mow his own lawn or do certain chores around the house. Petitioner testified he is unable to climb or lift anything heavy whatsoever.

Petitioner testified that sitting in the hearing the pain in his back was at a pain level of 7 out of 10. Petitioner testified this pain level will get worse with activity. Petitioner testified he feels worn out in the morning due to being restless all night because of the pain in his back. Petitioner further testified he cannot sit much longer than 50 minutes. Petitioner also testified that after he gets out of the car driving to work he is extremely stiff and sore.

Petitioner testified on October 9, 2012 he was able to find work within his restrictions at A.J.'s collision repair. Petitioner testified that he was hired at A.J.'s collision repair due to his knowledge in the auto repair business. Petitioner further testified other employees are available to do any work that requires heavy lifting, extreme bending, or twisting. Petitioner testified that he only works within his restrictions.

CONCLUSIONS OF LAW

The Arbitrator finds that the Petitioner testified credibly. From the date of accident forward to the present time, he has tried almost every conceivable form of conservative treatment to relieve his lower back pain. All of his doctors, including Dr. Monaco, found restrictions in his range of motion. He also has shown increased muscle tone, or swelling in the muscles in the lumbar area on many of his exams. He is able to work, but he still has pain.

Dr. Monaco's opinion that his symptoms were no longer related to his original accident, in essence, because he felt the symptoms should have resolved themselves by that date. Everyone recovers differently from injuries such as those sustained by the Petitioner. In rendering his opinion, Dr. Monaco does not explain why the Petitioner had persistent symptoms with regular treatment. He concludes the Petitioner was magnifying his symptoms. The Arbitrator notes that no other doctors found symptom magnification; the Petitioner had consistent symptoms and

followed all of the treatment recommendations of his doctors until his treatment authorization was revoked by the Respondent. Dr. Monaco's above opinions are not persuasive. The Petitioner's current condition is causally related to his accident of Jan. 29, 2012.

The past medical treatment, as it was for injuries causally related to the accident, are properly the Respondent's responsibility. Dr. Fletcher's prescription for pool therapy, a TENS unit and Ultram are reasonable forms of treatment for the injuries diagnosed and properly payable under Section 8(a) of the Act. Dr. Fletcher also recommends a myelogram with a follow up CT, presumably to rule in or out central stenosis from a disc. While the other doctors who reviewed the earlier MRI films did not see stenosis, the fact remains that the Petitioner still has severe lower back pain. The testing could be probative on the issue, and the Arbitrator believes it is reasonably required to cure or relieve the Petitioner from the effects of his injury.

The Arbitrator notes Petitioner has had work restrictions since the time of the his January 29, 2012 accident. The Arbitrator finds the opinions of Dr. Scott, Dr. Sutter, Dr. Olivero of Carle and, Dr. Paunicka and Dr. Fletcher to be much more credible than the opinion of Dr. Monaco. Dr. Monaco noted Petitioner could return to work without restrictions but also noticed Petitioner's condition has not improved since his accident.

The Arbitrator notes Respondent had paid Petitioner TTD from the time of the accident up until Petitioner's independent medical exam, with Dr. Monaco. The Arbitrator notes Petitioners restrictions of avoiding bending and twisting his back and 10 pound weight restriction put in place by Dr. Sutter on June 5, 2012 were never lifted. PE 3, p 63. The Arbitrator further notes Dr. Paunicka took Petitioner off work completely from the time of September 5, 2012 through Septmeber 17, 2012. PE 4, p 13.

Petitioner testified he was able to get a job within his work restrictions on October 9, 2012. On this date Petitioner began working at A.J.'s Collision Repair in Colfax, Illinois. Petitioner testified he is only seeking TTD benefits from July 14, 2012 through October 8, 2012, when he was able to find a job within his restrictions. The Arbitrator finds that Petitioner is entitled to TTD from 7/14/12 through 10/8/12.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify Choose direction	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lori Sue Morrison,
Petitioner,

vs.

NO: 08 WC 56768
10 WC 46563

Springfield Coal Company,
Respondent.

14IWCC0265

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's permanent partial disability and medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof..

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 22, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0265

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 7 - 2014

Ruth W. White

Ruth W. White

o-03/25/14
rww/wj
68

Daniel R. Donohoo

Daniel R. Donohoo

Charles J. DeVriendt

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

MORRISON, LORI SUE
Employee/Petitioner

Case# **08WC056768**

10WC046563

14IWCC0265

SPRINGFIELD COAL CO/TRI-COUNTY COAL CO
Employer/Respondent

On 4/23/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1241 LEMP & ANTHONY PC
WILLIAM LEMP
10805 SUNSET OFFICE DR STE 203
ST LOUIS, MO 63127

0332 LIVINGSTONE MUELLER ET AL
DENNIS S O'BRIEN
P O BOX 335
SPRINGFIELD, IL 62705

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LORI SUE MORRISON
Employee/Petitioner

v.

SPRINGFIELD COAL CO. /TRI-COUNTY COAL CO.
Employer/Respondent

Case # 08 WC 56768

Consolidated cases: 10 WC 46563

14IWCC0265

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **March 6, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☒ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other: Is Petitioner owed any amounts for mileage reimbursement?

14IWCC0265

FINDINGS

On **05/12/2008** and **10/04/2010**, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

On these dates, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$46,365.28**; the average weekly wage was **$891.64**.

On the date of accident, Petitioner was **44** years of age, ***single*** with **1** dependent child.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$0.00** for TTD, **$0.00** for TPD, **$0.00** for maintenance, and **$6,685.38*** for other benefits, for a total credit of **$6,685.38**.

*** The parties stipulated that this amount was limited to the time period between 12/05/2011 and 04/17/2012, for which Petitioner received non-occupational lost time benefits in this amount.**

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $594.43/week for 13 3/7 weeks, commencing May 26, 2009 through July 15, 2009, and December 7, 2011 through January 18, 2012, as provided in Section 8(b) of the Act.

The medical and pharmacy charges from Springfield Clinic (Petitioner's Exhibit (PX) 3), Lincolnland Physical Therapy (PX 9), Harry's Pharmacy (PX 4), Prime Therapeutics (PX 8), and Walgreens Pharmacy (PX 11), that pertain to Petitioner's cervical spine injuries at bar are found to be reasonable and necessary, and Respondent shall pay these charges, subject to the medical fee schedule, Section 8.2 of the Act. All other charges contained in those exhibits are from medical providers whose records were not introduced into evidence and are denied for failure to prove they are related to the accidents of May 12, 2008 and October 4, 2010. Respondent is given credit for any portion of these charges it has paid prior to the issuance of this decision.

Respondent shall pay Petitioner permanent partial disability benefits of $534.98/week for 300 weeks, because the injuries sustained caused the 60% loss of use of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay Petitioner the benefits that have accrued from May 12, 2008 through March 6, 2013, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay Petitioner $2,084.55 in mileage reimbursement. (See Respondent's Exhibit 17).

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

04/08/2013
Date

APR 23 2013

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

LORI SUE MORRISON
Employee/Petitioner

v.

Case # 08 WC 56768
Consolidated Case: 10 WC 46563

SPRINGFIELD COAL CO. /TRI-COUNTY COAL CO.
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

A previous decision was entered on this matter pursuant to Section 19(b) of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act") by Arbitrator Jeffery Tobin on March 11, 2011. A copy of that decision was entered into evidence as Arbitrator's Exhibit 5 and its findings are incorporated herein by reference. The transcript of proceedings concerning that decision was entered into evidence as Arbitrator's Exhibit 4. That hearing occurred on February 10, 2011. That decision dealt with prospective medical treatment, granted Petitioner a revision fusion at C6-C7 and denied Petitioner an artificial disc replacement at C3-C4, reserving rulings on all further issues for future determination. (Arbitrator's Exhibit (AX) 2).

Subsequent to the hearing of February 10, 2011, Petitioner, Lori Sue Morrison, continued working with restrictions for Respondent, Springfield Coal Co./Tri-County Coal Co., until April 19, 2011. Respondent is in the business of coal mining. Petitioner's work assignments during that period of time were watering roads in the coal mine, a job which involved hooking and unhooking a trailer to a tractor, filling a water tank on a number of occasions during a shift and driving the tractor through the mine during the shift, watering roads to reduce dust in the mine. (See Respondent's Exhibit (RX) 10). On April 19, 2011, Dr. Donald DeGrange performed the revision fusion at C6-C7. (Petitioner's Exhibit (PX) 2).[1]

Petitioner was paid temporary total disability (TTD) benefits following that surgery, and the parties stipulated that the only periods of disputed TTD were May 26, 2009 through July 25, 2009; and December 11, 2011 through April 17, 2012. Petitioner has indicated via an "arrow" marking on Arbitrator's Exhibit 1 that Petitioner is further owed maintenance benefits from April 18, 2012 through

[1] It is noted that the evidence establishes that Dr. DeGrange was originally hired by Respondent to conduct an examination of Petitioner pursuant to Section 12 of the Act. Petitioner then began a course of treatment with Dr. DeGrange, which led to Dr. DeGrange performing surgery, as mentioned *supra*. Dr. DeGrange's reports he authored after each course of treatment of Petitioner are carbon copied to Shellie Sylvia and Debbie Grimsley. (See PX 2). Dr. DeGrange's October 1, 2010 report pursuant to Section 12 of the Act was directed to the attention of Shellie Sylvia, who is addressed at "Old Republic Insurance/WC." (PX 2). Arbitrator's Exhibit 1 indicates that Respondent's insurance company is indeed Old Republic Insurance Co.

July 9, 2012. Respondent's basis of dispute for the claimed TTD and maintenance periods is liability. (AX 1).

Petitioner's assigned duties in April and May of 2009 were those of watering roads. She said she was also assigned at times to picking up trash, which was a light duty activity. (See also RX 10). Petitioner testified that while her job normally included shoveling and building stoppings, as well as picking and scooping, she never performed any of that work while on light duty. Petitioner testified at the first hearing that she was working when examined at Respondent's request by Dr. David Lange on May 5, 2009. Dr. Lange noted in his report that while Petitioner reported wearing a hard hat caused discomfort, Petitioner could work with that discomfort, that the wearing of a hard hat would not injure Petitioner or make the herniation worse, stating that Petitioner could safely wear a hard hat and engage in light duty activities. (RX 2-4). The medical records of Dr. Joseph Williams reflect he saw Petitioner on May 26, 2009, and Petitioner advised him at that time that she had worked the previous three days and that any time she put a hard hat on she experienced numbness in her arms and hands and her symptoms worsened. Dr. Williams stated that given Petitioner's statements, he recommended she return to work, but without wearing a hard hat. (PX 7). Petitioner and her attorney agreed that, pursuant to a union contract, a third doctor's opinion was to be obtained, and that after exchanging lists of doctors' names, Petitioner's attorney suggested Dr. Robson. (AX 4, pp. 46-48).

Dr. David Robson examined Petitioner on July 15, 2009. Dr. Robson was of the opinion that Petitioner could work sedentary duty with restrictions of a 15 pound weight limit, and that the hard hat would fall within that 15 pound weight limit. (RX 5). The attendance records reflect Petitioner returned to work on July 25, 2009. (RX 10). Petitioner testified that when she returned to work she was not pain free but did feel better.

Petitioner testified that she was able to work until she had a second surgery by Dr. Williams on October 16, 2009. Petitioner was off work at that time from October 16, 2009 through March 25, 2010, when she returned to light duty work. (See RX 10).

Petitioner testified she then saw Dr. Thomas Lee, who was suggested by her attorney, and was examined at Respondent's request by Dr. DeGrange (as discussed, *supra*). Dr. Lee's suggested treatment was the subject of the prior hearing pursuant to Section 19(b) of the Act and resulting decision. (AX 5).

Petitioner testified that she decided to have surgery by Dr. DeGrange. Petitioner continued working through April 18, 2011. (RX 10). Dr. DeGrange performed the C6-C7 revision fusion with removal of hardware at C4-C5 surgery on April 19, 2011 (as discussed, *supra*). (PX 2). Petitioner stated that this surgery helped, as it eased her pain, but it did not cure her problems. Petitioner was paid TTD benefits following this surgery.

Dr. DeGrange restricted Petitioner totally from work from her surgery in April 2011 until September 7, 2011, when he sated she could return to sedentary work with a 10 pound lifting limit, five hours per day and driving of no more than twenty minutes one-way. (PX 2). Petitioner testified that she was assigned volunteer work at the Girard Public Library pursuant to those restrictions.

On October 20, 2011, Petitioner advised Dr. DeGrange that a week after starting work at the library her symptoms returned, with pain at the base of her skull as well as tingling in the elbows, hands and fingers. Dr. DeGrange's physical examination findings at that time were those of an unrelated condition, cubital tunnel syndrome. On that date he felt Petitioner could work five hours per day with a 40 pound lifting limitation and no overhead work. (PX 2).

On November 10, 2011, following continued complaints, Dr. DeGrange took Petitioner off work entirely for one week, returning her to her previous restrictions on November 17, 2011, after a MRI

showed no canal compromise or nerve root impingement and an EMG showed no evidence of radiculopathy. (PX 2).

Petitioner was examined at Respondent's request pursuant to Section 12 of the Act by Dr. Paul Matz on November 23, 2011. (RX 1). Dr. Matz's deposition testimony was entered into evidence as Respondent's Exhibit 15. Petitioner said that at the time of Dr. Matz's evaluation, she was still taking extensive pain medication and continuing to have significant pain. Dr. Matz found the fusion performed by Dr. DeGrange to have been successful with x-rays showing a solid fusion at C6-C7. He diagnosed Petitioner as having chronic cervicalgia with resolved and successfully treated radiculopathy. He noted that the EMG performed by Dr. Phillips on November 17, 2011 showed no evidence of radicular problems. Dr. Matz was of the opinion that Petitioner could perform her duties as an underground coal miner, though she might need more frequent breaks if she developed neck stiffness. He felt that since her hard hat weighed less than two pounds she could work with a hard hat. He noted that he had reviewed a video of Petitioner washing a car and noted it showed Petitioner was able to change her neck positions. (RX 1; RX 15, pp.12-13; pp. 15-16; pp. 18-19). The video surveillance in question was taken in September 2011, and was introduced into evidence as Respondent's Exhibit 18. It depicts Petitioner moving about in a relatively normal manner while washing a car for a period in excess of twenty minutes. (RX 18).

Petitioner was again seen by Dr. DeGrange on December 7, 2011. Dr. DeGrange noted that he had reviewed Dr. Matz's report and agreed with the basic contention that the x-rays showed bridging of bone at all levels. Due to Petitioner's symptoms, he ordered a SPECT scan to conclusively diagnose whether or not the fusion had completed or if there was a mechanical basis to Petitioner's symptoms. Dr. DeGrange's disability status for Petitioner on this date was "[t]emporary partial disability, 15 pound lifting limit and no helmet wearing for the time being." (PX 2). Petitioner testified she was not paid TTD benefits at that point.

The SPECT scan was performed on January 4, 2012, and the reviewing radiologist stated that it did not suggest nonunion or pseudoarthrodesis. Dr. DeGrange last saw Petitioner on January 18, 2012, and he detected no muscle spasm, noted tenderness in numerous areas but no focal motor deficits or focal sensory deficits. He interpreted the SPECT scan as showing a solid bony fusion. He stated that despite Petitioner's somatic complaints, she had reached maximum medical improvement (MMI). In regard to Petitioner's cervical spine, Dr. DeGrange's final diagnoses were C6-C7 pseudarthrosis with prior C4-C5 and C5-C6 fusions, with successful revision fusion at C6-C7 to repair the pseudarthosis. He noted that no further testing or treatment was required as it related to her work-related incident. Dr. DeGrange released Petitioner from his care and reported that she could return to work with restrictions of no underground work, as she could not tolerate the weight of the hard hat, no lifting of more than 25 pounds, no repeated bending or twisting of the neck and no prolonged work at or above shoulder level. No follow-up evaluation was required by Dr. DeGrange. (PX 2).

Petitioner said she received a letter from her manager, Archie Parker, dated April 19, 2012, indicating that since Respondent had no information that she had last worked a year earlier, on April 18, 2011, and that they had no information indicating she would be physically able to return to work and assume her normal duties, her employment was terminated. That letter indicated Respondent's intent to terminate Petitioner's employment, but also stated Respondent would re-evaluate this position if Petitioner provided it with a written medical update with a date when she would be able to return to work. (PX 6). Petitioner said she was discharged and that Respondent did not offer her any other position within the company. Petitioner said she filed a union grievance in regard to her termination and a labor arbitrator upheld Respondent's decision to terminate her employment. Petitioner later testified on cross-examination that her union classification of "OUTBY" was an underground position

at Respondent's coal mine, not on the surface, and that workers on the surface had a different classification and also had to wear hard hats.

Petitioner said that following her release by Dr. DeGrange she returned to her primary care physician, Dr. J. Eric Bleyer, the same physician who had initially referred her to Dr. Watson, who in turn had referred her to Dr. Williams. Petitioner testified that Dr. Bleyer at this point referred her to Dr. Margaret MacGregor, who saw Petitioner for the first time on March 5, 2012. Dr. MacGregor's records from this date indicate that Dr. Bleyer in fact reviewed said records. The medical notes for the March 5, 2012 visit reflect complaints of pain at the base of the skull which progressed to a headache, soreness and tenderness in the area of her elbows with her worst pain in the back of her arms into her hands. Those notes do not reflect a physical examination having been conducted. By the time Dr. MacGregor next saw Petitioner on April 12, 2012, she had undergone bilateral carpal tunnel releases by Dr. Greatting. Those conditions are not the subject matter of this claim. Petitioner's pain complaints remained in the neck; she also experienced headaches and bilateral arm, elbow and hand pain. A physical examination revealed decreased range of motion and a diagnosis of cervical spondylosis. (PX 3).

A CT scan of the cervical spine requested by Dr. MacGregor was conducted on April 25, 2012. It revealed an osseous fusion from C4 to C6 and a plate and osseous fusion at C6-C7. No stenosis was seen at any level. A myelogram of the cervical spine of that same date showed no evidence of a myelographic block. (PX 3).

On July 2, 2012, Petitioner's complaints to Dr. MacGregor were similar to previous visits. Petitioner told the doctor she could not sit for more than an hour and that keyboarding was difficult, as was anything where she had to hold her arms in front of her. Dr. MacGregor noted markedly limited range of motion of the cervical spine. She stated that even going to school would be difficult for Petitioner, did not recommend keyboarding and said she could not foresee Petitioner being involved in mining or heavy labor. (PX 3).

Petitioner testified that prior to working in Respondent's coal mine, she performed construction work, including work performing maintenance at rental units owned by her father. She said that after her termination at the mine she looked in the newspaper and online for employment opportunities, but did not note what type of work she had applied for and what response she got to her inquiries. No records in regard to such a search were introduced into evidence, although Petitioner claimed she had such documents at home. Petitioner said that commencing in early July 2012, Respondent provided vocational rehabilitation through Tracy Fortenberry, and that she cooperated with those efforts. Petitioner was paid maintenance benefits in the same amount as the TTD benefits she had received during the rehabilitation effort period. She testified that during that same period of time she also pursued further education, obtaining two grants from the state and federal governments which pay for her college coursework.

Petitioner said that during the vocational rehabilitation effort she had discussions with AT&T in regard to a customer service position and had passed testing with them, and when talking to them about the job and finding that it involved sitting, talking on the telephone and typing, she advised them she could not do those activities per Dr. MacGregor. Petitioner said that it was at this point that she decided to go to college on a full-time basis. The employer contact log filled out by Petitioner dated August 15, 2012 indicates her having passed the test for AT&T, but indicates she would in the future be interviewed in regard to that position. (RX 16). Petitioner had already decided to go to college full time in July 2012 according to her testimony and the records of Tracy Fortenberry, Respondent's vocational consultant. (RX 16). Petitioner testified that it was on August 23, 2012 that she had the conversation with a representative from AT&T, and told that person of her restrictions and of going to school full-

time. Petitioner testified that she advised Ms. Fortenberry that when the AT&T person was advised she was in school, that person told her she would not be able to work with that company. Petitioner testified that she began classes at Lincoln Land Community College three days earlier, on August 20, 2012.

Petitioner testified that as of the date of trial, she was in constant pain in her neck and shoulders, experienced difficulty moving her head from side to side and up and down, suffered from headaches and had difficulty sleeping. She said that to relieve her pain she would lie down in a reclining position to get pressure off of her neck.

The records of Lincoln Land Community College indicate Petitioner took courses and earned or is in the process of earning credit hours for the Fall 2012 and Spring 2013 semesters. (RX 11). Petitioner testified that she was pursuing a business degree and taking courses such as computer applications, business law, college algebra and introduction to accounting.

Respondent introduced the records of vocational counselor Tracy Fortenberry. Her records indicate meeting with Petitioner on several occasions between July 6, 2012 and August 22, 2012, as well as additional telephonic contact between them. The records indicate that copies were provided to counsel for both Petitioner and Respondent as they were generated. (RX 16).

Ms. Fortenberry instructed Petitioner on how to look for and apply for jobs, as well as how to dress and interview for jobs. She noted Petitioner's transferable job skills and she performed labor market research in the Greater Springfield, Illinois area. Following her initial meeting with Petitioner and Petitioner's attorney and performing labor market research and after considering Petitioner's work history and the restrictions set out by Drs. Matz, DeGrange and MacGregor, Ms. Fortenberry was of the opinion that Petitioner could seek employment and return to work. Ms. Fortenberry reported in her initial report that Petitioner told her at their first meeting that she had not begun a job search on her own. (RX 16).

Ms. Fortenberry periodically provided Petitioner with lists of employers to contact and Petitioner provided Ms. Fortenberry with contact logs indicating contacts she had made with potential employers. In her second report, Ms. Fortenberry noted that she had instructed Petitioner was not to disclose her restrictions to potential employers and was only to disclose the restrictions if an employer noted a job task that exceeded her physical capabilities so reasonable accommodations could be discussed. During their second meeting, Petitioner advised Ms. Fortenberry that she was seeking financial aid grant assistance to attend Lincoln Land Community College in the Fall. Ms. Fortenberry met with Petitioner at the college on July 25, 2012, and noted that they discussed that Petitioner was to continue a full-time employment search even if she was to attend school, with Petitioner noting that she could at least work part-time while doing so. (RX 16)

The latest medical record introduced into evidence was the February 11, 2013 office note of Dr. MacGregor. At that time, Petitioner was complaining of neck pain with numbness in both hands and a feeling of coldness in the hands. Petitioner was taking Gabapentin three times per day, which she said was helping somewhat. Dr. MacGregor's physical examination findings included findings of a supple neck, a good range of motion, weakness in squeezing the hands and good movement of all extremities. Continued use of Gabapentin and a Medrol Dosepak was prescribed. (PX 3).

Medical bills were introduced from the following providers where medical records indicate treatment for medical conditions claimed to be as a result of these accidents: Springfield Clinic (PX 3); Lincolnland Physical Therapy (PX 9); Harry's Pharmacy (PX 4); Prime Therapeutics (PX 8); and Walgreens Pharmacy (PX 11). As stated above, Petitioner underwent treatment for carpal tunnel syndrome, and that treatment is not the result of the work accidents in question. Therefore, medical

bills for any treatment concerning the carpal tunnel injury, or any other injury not at issue, will not be awarded in this matter. Further, a substantial amount of the medical bills in evidence were paid via Respondent's insurance, and Respondent shall have any and all applicable credit in regard to those bills paid.

Petitioner introduced a list of trips for which she was requesting mileage reimbursement. (PX 5). She also admitted a subsequent list of trips that were corrected to show the total amount claimed owed as $3,823.11. (PX 12). Respondent introduced a list of mileage it stipulated it believed was subject to reimbursement, totaling $2,084.55 (based on 4,087.36 miles at a rate of $0.51 per mile). (RX 17). The only testimony in regard to mileage was Petitioner saying that she did not wish to be reimbursed for more mileage than she had actually driven, when on cross-examination it was noted that on a number of occasions multiple requests were made for a single trip to a physician's office and where the address used for the destination was in the wrong city. (See PX 5). Counsel for Petitioner stated that the list was prepared by his office and agreed duplicate claims should be removed. Neither Petitioner nor any other witness testified as to how the distances were determined for any of the trips listed.

CONCLUSIONS OF LAW

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner testified that she her initial choice of physician was Dr. Bleyer, her primary care physician. She stated that he referred her to Dr. Watson. Dr. Watson referred Petitioner to Dr. Williams. Both Dr. Watson and Dr. Williams are within the chain of referrals of the first doctor of choice. (See PX 7). Petitioner testified that Dr. Bleyer referred her to Dr. MacGregor. This is confirmed in the records of Dr. MacGregor. Dr. MacGregor is within the chain of referrals of the first doctor of choice. (PX 3)

Petitioner testified that she saw Dr. Lee on the recommendation of her attorney, not on the referral of Dr. Bleyer. Dr. Lee is Petitioner's second physician of choice.

Petitioner was examined at Respondent's request by Dr. DeGrange pursuant to Section 12 of the Act on October 1, 2010. Petitioner then chose to undergo medical treatment with Dr. DeGrange. However, no bills for treatment by Dr. DeGrange were introduced into evidence.

The medical and pharmacy charges from Springfield Clinic (PX 3), Lincolnland Physical Therapy (PX 9), Harry's Pharmacy (PX 4), Prime Therapeutics (PX 8), and Walgreens Pharmacy (PX 11) that pertain to Petitioner's injuries at bar are found to be reasonable and necessary, and Respondent shall pay these charges, subject to the medical fee schedule, Section 8.2 of the Act. All other charges contained in those exhibits are from medical providers whose records were not introduced into evidence and are denied for failure to prove they are related to the accidents of May 12, 2008 and October 4, 2010. Respondent is given credit for any portion of these charges it has paid prior to the issuance of this decision.

Issue (K): What temporary benefits are in dispute? (TTD; Maintenance)

Petitioner is found to be temporarily and totally disabled from May 26, 2009 to July 15, 2009, a period of 7 2/7 weeks, and from December 7, 2011 to January 18, 2012, a period of 6 1/7 weeks, for a total of 13 3/7 weeks, and not thereafter. These findings are based on the following facts:

Petitioner testified at the first hearing that she was working when examined at Respondent's request by Dr. Lange on May 5, 2009. She further testified that Respondent repeatedly accommodated her restrictions when she returned to work. Dr. Lange noted in his report that while Petitioner reported

wearing a hard hat caused discomfort, Petitioner could work with that discomfort, that the wearing of a hard hat would not injure Petitioner or make the herniation worse, stating that Petitioner could safely wear a hard hat and engage in light duty activities. (RX 2-4). On May 26, 2009, Dr. Williams recommended Petitioner return to work, but without wearing a hard hat. (PX 7). Petitioner's underground mining job required everyone to wear a hard hat. Petitioner and her attorney agreed that pursuant to a union contract a third doctor's opinion was to be obtained, and that after exchanging lists of doctor's names, Petitioner's attorney suggested Dr. Robson. Dr. Robson examined Petitioner on July 15, 2009, and was of the opinion that Petitioner could work with restrictions of a 15 pound weight limit and that the hard hat would fall within that 15 pound weight limit. (RX 5). The attendance records reflect Petitioner returned to work on July 25, 2009. (RX 10). No explanation was given for why Petitioner failed to return to work immediately after the third physician opined that she could work while wearing a hard hat.

Following Petitioner's third cervical surgery of April 19, 2011, Dr. DeGrange restricted Petitioner totally from work until September 7, 2011, when he sated she could return to sedentary work with a 10 pound lifting limit, five hours per day and driving of no more than twenty minutes one-way. Petitioner testified that she was assigned work at the Girard Public Library pursuant to those restrictions. On October 20, 2011, Petitioner advised Dr. DeGrange that a week after starting work at the library her symptoms returned, with pain at the base of her skull as well as tingling in the elbows, hands and fingers. Dr. DeGrange's physical examination findings at that time were those of an unrelated condition, cubital tunnel syndrome. On that date he felt Petitioner could work five hours per day with a 40 pound lifting limitation and no overhead work. On November 10, 2011, following continued complaints, Dr. DeGrange took Petitioner off work entirely for one week, returning her to her previous restrictions on November 17, 2011, after an MRI showed no canal compromise or nerve root impingement and an EMG showed no evidence of radiculopathy. (PX 2).

Dr. Matz performed an examination of Petitioner at Respondent's request pursuant to Section 12 of the Act on November 23, 2011, and found Petitioner's recent surgery had resulted in a successful fusion with the recent MRI showing no cervical stenosis. Dr. Matz had also viewed the video surveillance of Petitioner washing a car on September 25, 2011, and noted that in that video she appeared to flex her neck beyond what she had done for him during his examination of November 23, 2011. He stated that in the video she appeared to be moving about quite easily doing the car washing activities. (RX 1; RX 15, pp. 12-13). He was of the opinion that Petitioner was as of that time suffering from cervicalgia which he felt was minor and that she was capable of working in a coal mine and wearing a helmet and lamp weighing less than two pounds as the head itself weighed a lot more than two pounds, though he noted she might need more frequent breaks if she developed neck stiffness from prolonged work. (RX 1; RX 15, pp.18-19).

On December 7, 2011, Dr. DeGrange ordered a SPECT scan to definitively prove whether the fusion was solid and restricted Petitioner's work to 15 pounds of lifting and no wearing of a helmet/underground work. Dr. DeGrange last saw Petitioner on January 18, 2012, and noted that the SPECT scan showed Petitioner had a solid bony fusion. His physical examination on that date revealed no spasm in the neck, diffuse tenderness in the cervical region, and no focal motor or sensory deficits. He declared Petitioner to be at MMI, stated that there was no further orthopedic or neurologic testing or treatment required, and discharged her from his care, stating she could work with a 25 pound lifting restriction, no repeated bending or twisting of the neck, no prolonged work at or above shoulder level and no wearing of a hard hat. (PX 2).

While Petitioner testified that she had looked for work prior to the institution of vocational rehabilitation assistance, she did not identify when she began looking for work, what type of work she

was seeking, where she had applied for work, or introduce any exhibits evidencing such activity. For an award of TTD benefits, it is not sufficient that Petitioner merely prove she did not work; she must prove she could not work. *Arbuckle v. Industrial Comm'n*, 32 Ill.2d 581, 586, 207 N.E.2d 456 (1965). In determining if temporary total disability is to be paid, the "dispositive test is whether the condition has stabilized, because a claimant is entitled to TTD when a 'disabling condition is temporary and has not reached a permanent condition.'" *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 175, 741 N.E.2d 1144 (5th Dist. 2000). Here, Petitioner's condition had stabilized and reached a permanent condition by January 18, 2012, when Dr. DeGrange stated no further testing or treatment was needed and declared her at MMI. While Petitioner subsequently sought follow-up care from Dr. MacGregor beginning March 5, 2012, Dr. MacGregor's treatment has been limited to evaluation, diagnostic testing, and prescription of medication; no specific work restrictions have been issued by that physician. (See PX 3).

Petitioner failed to introduce any evidence in regard to her alleged search for work between January and July of 2012, such as job search logs, lists of employers contacted during that period or copies of applications for employment. When questioned in regard to this matter, she testified she had those materials at home. Again, no such documentation was ever offered into evidence. Further, Ms. Fortenberry's vocational records indicate that Petitioner informed her that she had not engaged in a job search as of the first meeting with Ms. Fortenberry in July 2012. The weight of the evidence thus indicates that Petitioner did not prove she engaged in a self-directed job search during the period in question.

Based on the foregoing, Petitioner has failed to prove she was entitled to any TTD or maintenance benefits from January 18, 2012 through the commencement of her vocational rehabilitation program with Ms. Fortenberry on July 6, 2012.

Issue (L): What is the nature and extent of the injury?

Petitioner has undergone three different surgical procedures to her cervical spine. The first was a C5-C6 and C6-C7 anterior cervical discectomy and fusion performed by Dr. Williams on October 9, 2008. The second was a C4-C5 anterior discectomy and fusion with removal of the hardware from the prior surgery, again performed by Dr. Williams on October 16, 2009. The third surgery, performed by Dr. DeGrange on April 19, 2011, was a C6-C7 fusion with removal of the hardware at C4-C5.

Prior to these accidents, Petitioner was able to perform her regular duties as an underground coal miner, work that required physical labor and the wearing of a hard hat. She returned to work in the coal mine at various times between the date of the first accident and the date of her eventual job termination by Respondent when it became apparent her restrictions would not allow her to return to work pursuant to her treating physician's restriction of not wearing a hard hat, which is required for underground coal mining. Respondent accommodated her attempts to return to work with restrictions, providing her with work within those restrictions.

Respondent did attempt to assist Petitioner in finding employment in the Summer of 2012, but Petitioner chose to attend college on a full time basis instead of seeking permanent employment. As of the date of trial, Petitioner was attending Lincoln Land Community College on a full time basis, pursuing a business degree. She noted that government grants were covering the cost of her education.

Petitioner testified that as of the date of trial, she continues to have complaints of neck and shoulder pain, difficulty moving her head from side to side and up and down, headaches and difficulty sleeping.

As a result of these accidents, Petitioner has suffered a 60% loss of use of the person as a whole pursuant to Section 8(d)2 of the Act. The Arbitrator finds guidance in the basis of this award in the

Commission decision of *Landreth v. Landreth Lumber Company*, 11 IWCC 532 (June 1, 2011). In *Landreth*, the petitioner underwent three surgeries at three cervical levels, similar to the case at bar. The petitioner in that case was unemployed as of the date of trial and his employer was no longer business. In *Landreth*, however, there was no evidence of any permanent restrictions, nor was there evidence that the petitioner was unemployed due to a result of his work injuries. The Commission awarded 55% loss of use of the person as whole pursuant to Section 8(d)2 of the Act in *Landreth*.

Issue (O): Is Petitioner owed any amounts for mileage reimbursement?

Petitioner introduced a list of trips for which she was requesting mileage reimbursement. (PX 5; PX 12). Respondent introduced a list of mileage it stipulated it believed was subject to reimbursement. (RX 17). The only testimony in regard to mileage was Petitioner saying that she did not wish to be reimbursed for more mileage than she had actually driven, when on cross-examination it was noted that on a number of occasions multiple requests were made for a single trip to a physician's office and where the address used for the destination was in the wrong city. Counsel for Petitioner stated that the list was prepared by his office and agreed duplicates should be removed. Petitioner offered a "corrected" mileage chart as Petitioner's Exhibit 12. Neither Petitioner nor any other witness testified as to how the distances were determined for any of the trips listed.

While Petitioner has failed to prove with specificity the exact mileage she traveled on account of these accidents, and her initial mileage reimbursement list admittedly contains several duplicate requests for reimbursement for single trips, as well as an erroneous address for the Girard Public Library (placing it in a distant city), it is clear she did travel to physicians, therapists, rehabilitation meetings, etc. Respondent introduced its own proposed list of mileage. (RX 17). This list contains the majority of dates alleged by Petitioner and is treated as a stipulation by Respondent that these miles are reimbursable.

Based on the foregoing, the Arbitrator awards Petitioner mileage reimbursement based on Respondent's stipulated amounts as set forth in Respondent's Exhibit 17, $2,084.55.

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF CHAMPAIGN)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Debbie Smith,

Petitioner,

vs. NO: 12 WC 010237

14IWCC0266

Dana Sealing Manufacturing,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by both parties herein and notice given to all parties, the Commission, after considering the issue of nature and extent of Petitioner's permanent disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

On September 13, 2013, the Arbitrator caused an arbitration decision to be filed with the Commission, one in which awarded partial disability benefits under both Section 8(e)1 of the Act and under Section 8(e)9, respectively. The benefits compensated Petitioner for the crushing injury to her right hand, an injury that resulted in multiple surgeries, including the excision of nectrotic tissue of the pulp from her right thumb. Both parties appealed the decision and, in doing so, conferred jurisdiction upon the Commission to review the arbitration decision. In reviewing the arbitration decision, the Commission agrees with benefit awarded under Section 8(e)1 but finds it appropriate to increase the benefit awarded under Section 8(e)9.

The Commission takes notice that the lingering effects of Petitioner's injury to her right hand has resulted in the diminution of both the quality of her work for Respondent but also of her ability to engage in her pursuits outside of this work, namely the cutting hair and engaging in a craft business in which she sewed dolls, pillows and decorative art. To compensate Petitioner for this, the Commission modifies the benefits awarded under Section 8(e)9 upwards, finding

14IWCC0266

Petitioner lost 50% use of her right hand.

All other findings and conclusions of law contained in the September 13, 2013, arbitration decision are affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $356.39 per week for a period of 140.5 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the 50% loss of use of her right thumb and the 50% loss of use of her right hand, respectively.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the unpaid charge from Indiana University Health under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $61,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 8 2014
KWL/mav
O: 03/17/14
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0266

SMITH, DEBBIE
Employee/Petitioner

Case# **12WC010237**

DANA SEALING MANUFACTURING
Employer/Respondent

On 9/13/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.03% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1608 MOSS & MOSS PC
DAVID MOSS
122 WARNER CT PO BOX 655
CLINTON, IL 61727

0180 EVANS & DIXON LLC
JAMES M GALLEN
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)
)SS.
COUNTY OF CHAMPAIGN)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

14IWCC0266

DEBBIE SMITH
Employee/Petitioner

v.

DANA SEALING MANUFACTURING
Employer/Respondent

Case # 12 WC 10237

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Urbana**, on **July 18, 2013**. By stipulation, the parties agree:

On the date of accident, **April 6, 2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **$29,105.39**, and the average weekly wage was **$593.99**.

At the time of injury, Petitioner was **52** years of age, ***married*** with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **$6,674.41** for TTD, **$0** for TPD, **$0** for maintenance, and **$13,542.82** for other benefits (permanent partial disability benefit advance payment). All TTD has been paid, so Respondent is entitled to a credit of **$13,542.82** for permanency paid.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of $356.39/week for a further period of 120 weeks, as provided in Sections 8(e)1, 8(e)8 and 8(e)9 of the Act, because the injuries sustained caused the amputation of the distal phalanx of Petitioner's right thumb (50% loss of use of the thumb), and the 40% loss of use to the right hand.

Per agreement, Respondent is ordered to pay the unpaid charge from Indiana University Health contained in Petitioner's Exhibit 8, subject to the medical fee schedule, Section 8.2 of the Act.

Respondent is entitled to a credit for $13,542.82 for permanency paid on this claim, as noted above.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

09/09/2013
Date

SEP 13 2013

STATE OF ILLINOIS)
)SS
COUNTY OF CHAMPAIGN)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

DEBBIE SMITH
Employee/Petitioner

14IWCC0266

v.

Case # 12 WC 10237

DANA SEALING MANUFACTURING
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Debbie Smith, was at all relevant times herein employed by Respondent, Dana Sealing Manufacturing, as a "utility," meaning that she performed every job in the plant that needed to be done. She is right hand dominant. On April 6, 2011, she and a co-worker were cleaning a branding machine. While wiping alcohol off the table, the roller of the machine grabbed the rag and pulled her right hand into the roller. After that she noticed that her thumb was hanging off and her hand was stuck in the rollers. She was then taken by ambulance to Crawford Memorial Hospital, where she was in turn transferred by air ambulance to Indiana University Hospital, also known as Methodist Hospital. She was treated and released the same day. (Petitioner's Exhibit (PX) 4; PX 5).

On April 7, 2011, Petitioner came under the care of Dr. William McDonald, who gave conservative treatment. He then referred Petitioner to Southern Illinois Hand Center, where she was seen by Dr. Nash Naam. Dr. Naam performed surgery on April 20, May 4 and September 28, 2011.

Petitioner first saw Dr. Naam on April 19, 2011, on a referral from Dr. McDonald. She complained of pain mainly in the right thumb and numbness in the long and ring fingers. Because of concerns about the thumb, Dr. Naam determined to operate as soon as possible. On April 20, 2011, Dr. Naam performed surgery consisting of the following:

1. Extensive debridement and irrigation of deep lacerations of the volar aspect of the right long and ring fingers;
2. Microneurosurgical neuroplasty of the radial digital nerve of the right long finger;
3. Microsurgical exploration and neuroplasty of the radial digital nerve of the right ring finger;
4. Excision of necrotic tissue of the pulp of the right thumb;
5. Open treatment of open fracture of the distal phalanx of the right thumb;
6. Soft tissue coverage of the traumatic amputation of the right thumb using cross-finger pedicle flap from the dorsal aspect of the proximal phalanx of the right-index finger;
7. Full-thickness skin graft of the secondary defect of the right index finger from the right elbow;
8. Extensive debridement of deep lacerations of the right long and ring fingers; and
9. Application of a short-arm splint.

(PX 7).

On May 4, 2011 Dr. Naam performed a second surgery consisting of a division and in-setting of cross-finger pedicle flap of the right thumb; and secondary closure of dehiscence of the of the right long finger wound of one centimeter and of the right ring finger wound of two centimeters. (PX 7).

Petitioner followed-up with Dr. Naam on May 10, 17, & 24, 2011. At each visit Petitioner was doing well. At the June 7, 2011 visit, Dr. Naam diagnosed chronic regional pain syndrome (CRPS), for which he recommended medication and therapy. By June 21, 2011, she was doing much better and was determined to have progressive improvement of CRPS. At the July 5, 2011 visit, Petitioner was doing much better and the CRPS had improved significantly. Dr. Naam released Petitioner to return to light duty work with the restriction of not lifting more than two pounds with her right hand. He advised no further surgery until her hand function improved, and the CRPS was markedly improved. By July 19, 2011, she had improved to the point that the doctor recommended scar excision and Z-plasties of the scars of the MP joints of the long and ring fingers. At the August 2, 2011 visit, they were still awaiting the approval for surgery, so Dr. Naam recommended Petitioner resubmit her request for authorization. Approval was received and the surgery was scheduled by the September 22, 2011 visit. (PX 7).

On September 28, 2011, Dr. Naam performed a surgery consisting of excision of the contracted scar of the metacarpal phalangeal joint of the right long finger with a Z-plasty of the metacarpalphalangel joint of the right long and ring fingers. (PX 7).

Petitioner's first post-operative visit was on October 3, 2011, and the dressings were changed on that date. By October 17, 2011, she was doing very well and could return to light duty starting the next day. She was to continue light duty, but the weight limit was raised to 10 pounds. At the November 28, 2011 visit, Dr. Naam released Petitioner to regular work activities. During the December 13, 2011 visit, Dr. Naam concluded that Petitioner would reach maximum medical improvement (MMI) in approximately 6 months. At the last visit of January 10, 2012, Petitioner was doing very well and was released to return on an "as-needed" basis. (PX 7).

At trial, Petitioner stated that she has no feeling in the thumb from the second joint to the end, and no feeling in the entire long finger or partial of the ring finger. She testified that her right palm is numb. She cannot straighten out her long or ring fingers totally and cannot give a proper grip. She says that she finds it difficult to grip or grasp with her right hand. Petitioner does not believe her work quality is the same as before the accident, but testified that she always endeavors to give 100% effort. She can no longer cut hair, as she did before the accident. Petitioner had a craft business before the accident. As a part of that business, she would sew dolls, pillows, and decorative art. She stated that this business was one of her "passions." She can no longer sew as she cannot control the needles and scissors due to her hand and finger conditions. She last saw Dr. Naam on January 10, 2012.

CONCLUSIONS OF LAW

The Arbitrator initially finds that Petitioner suffered an amputation of the distal phalanx of the right thumb entitling her to 50% loss of use of the thumb under Sections 8(e)1 and 8(e)8 of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq*. (hereafter the "Act").

In addition to the amputation of the distal phalanx of the right thumb, Petitioner suffered from extensive injuries to her fingers that necessitated three surgical operations. In determining the permanency award, the Arbitrator notes the diagnoses given in regard to her fingers, the extensive nature of the three surgical procedures, and Petitioner's current and credible subjective complaints regarding her fingers and hand, as discussed *supra*. Taking into account the foregoing, the Arbitrator finds that Petitioner has sustained the 40% loss of use to the right hand pursuant to Section 8(e)9 of the Act.

All temporary total disability benefits have been paid, and there is no credit for overpayment or claim for underpayment. Respondent is entitled to a credit for $13,542.82 in permanent partial disability benefits paid to date on this claim.

It is further noted that liability for unpaid medical bills is not in dispute and pursuant to a stipulation by the parties, Respondent is ordered to pay the unpaid charge from Indiana University Health contained in Petitioner's Exhibit 8 in accordance with Section 8.2 of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JON LUCHSINGER,

Petitioner,

vs.

NO: 12 WC 44551

14IWCC0267

IL DEPT. OF CORRECTIONS,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b-1) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of penalties and fees and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds that Respondent's reliance upon the causation opinion of its §12 examiner, Dr. Lami, was not unreasonable and vexatious. As such, we vacate the award of penalties under §19(k) and the attorneys' fees under §16. However, we affirm the award of penalties under §19(l). We note that Respondent did not have Petitioner examined by Dr. Lami until May 15, 2013, and Respondent admitted in its brief that it had not paid temporary total disability (TTD) from February 27, 2013, when Dr. Rubenstein first took Petitioner off work, through March 14, 2013.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $1,287.87 per week for a period of 33-1/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $16,338.77 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner additional compensation of $4,500.00 as provided in §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that the Arbitrator's awards for penalties under §19(k) and attorneys' fees under §16 of the Act are hereby vacated.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED: APR 0 9 2014

Charles J. DeVriendt

Ruth W. White

Daniel R. Donohoo

SE/
O: 3/19/14
49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b-1) DECISION OF ARBITRATOR

LUCHSINGER, JON
Employee/Petitioner

Case# **12WC044551**

ILLINOIS DEPARTMENT OF CORRECTIONS
Employer/Respondent

14IWCC0267

On 12/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

Unless a party does the following, this decision shall be entered as the decision of the Commission:

1) Files a Petition for Review within 30 days after receipt of this decision; and

2) Certifies that he or she has paid the court reporter $ 476.00 for the final cost of the arbitration transcript and attaches a copy of the check to the Petition; and
3) Perfects a review in accordance with the Act and Rules.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0274 HORWITZ HORWITZ & ASSOC
MICHAEL W HORWITZ
25 E WASHINGTON ST SUITE 900
CHICAGO, IL 60602

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

5120 ASSISTANT ATTORNEY GENERAL
DAVID PAEK
100 W RANDOLPH ST 13TH FL
CHICAGO, IL 60601

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

DEC 9 2013

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

14IWCC0267

STATE OF ILLINOIS)
)SS.
COUNTY OF Will)

☐ Injured Workers' Benefit Fund (§4(d))
x☒ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b-1)

Jon Luchsinger
Employee/Petitioner
v.
Illinois Department of Corrections
Employer/Respondent

Case # 12 WC 44551

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. Petitioner filed a *Petition for an Immediate Hearing Under Section 19(b-1) of the Act* on **August 30, 2013**. Respondent filed a *Response* on **September 19, 2013**. The Honorable **George Andros**, Arbitrator of the Commission, held a pretrial conference on **October 16, 2013**, and a trial on **October 16, 2013**, in the city of **New Lenox**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, **December 13, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$100,453.60**; the average weekly wage was **$1,931.80**.

On the date of accident, Petitioner was **57** years of age, ***married*** with **0** dependent children.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$15,086.86** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$15,086.86**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $1,287.87/week for 33.14 weeks, commencing February 27, 2013 through October 16, 2013, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of $16,338.77, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay to Petitioner penalties of **$16,196.95**, as provided in Section 16 of the Act; **$21,965.96**, as provided in Section 19(k) of the Act; and **$4,500.00**, as provided in Section 19(l) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a permanent disability, if any.

RULES REGARDING APPEALS Unless a party 1) files a *Petition for Review* within 30 days after receipt of this decision; and 2) certifies that he or she has paid the court reporter $476.00 for the ***final*** cost of the arbitration transcript and attaches a copy of the check to the *Petition*; and 3) perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

/s/ George J Andros
Signature of Arbitrator George Andros

December 6, 2013
Date

ICArbDec19(b-1) p. 2

DEC - 9 2013

STATEMENT OF FACTS

On December 13, 2012 the petitioner, Jon Luchsinger, was employed by the respondent, Illinois Department of Corrections, as the Chief Engineer at the Dwight Correctional Center in Dwight, Illinois. The petitioner had been employed by the respondent for approximately 14 years at that time.

As chief engineer, the petitioner worked with 5 employees under his supervision, including electricians, carpenters, laborers and plumbers. The petitioner's staff was shorthanded, so the petitioner would work with each of the tradesmen when needed, performing all the activities of the tradesman as part of his duties. As part of his work duties, the petitioner replaced processed piping and recharge lamps, changed toilets, rodded out drains and performed any other task as necessary. The petitioner's job also required that he lift furniture such as beds and tables, and equipment like rodders and boxes of hand tools. The lifting involved in the petitioner's position could range anywhere from 5 to 80 pounds. The petitioner's job duties further required him to climb ladders and scaffold, crawl into tight spaces and work frequently overhead.

On December 13, 2012, the petitioner was emptying a 40-50 pound garbage can into a 5 foot tall garbage tote. The petitioner testified that as he lifted the can, he attempted to balance its weight on the tote. However, the edge of the can slipped from the tote and the petitioner caught the weight of the can by "muscling" it back up to stop the can from falling. The petitioner testified that he immediately felt pain into his arms, hands and neck. The petitioner explained that this pain was different than any pain he had felt in his arms or hands before.

On December 21, 2012, the petitioner was seen by Dr. Scott Rubenstein at the Illinois Bone and Joint Institute for sore hands, wrists, arms and neck. It is noted in Dr. Rubenstein's report that the petitioner's symptoms onset on December 13, 2012 with his work accident. Dr. Rubenstein prescribed medication and laboratory studies for the petitioner and recommended a follow up visit. (PX 1).

On January 14, 2013, the petitioner was seen by Dr. Rubenstein again. Dr. Rubenstein reviewed the petitioner's lab work and recommended that he be evaluated by a rheumatologist. He also recommended physical therapy for the petitioner's pain in the neck and shoulders. (PX 1).

On January 28, 2013, the petitioner began physical therapy at Provena St. Joseph Medical Center. (PX 8).

Also on January 28, 2013, the petitioner was seen by Dr. Charles Geringer for a rheumatology consult. Dr. Geringer found that the petitioner did not have any significant evidence of an inflammatory or collagen vascular disease. Dr. Geringer did suspect that the petitioner could have a cervical syndrome and recommended an x-ray for that. The petitioner did undergo that x-ray, which revealed mild degenerative changes in the lower cervical spine. At trial, the petitioner testified that this was the only time he ever saw Dr. Geringer. (PX 8).

On February 20, 2013, the petitioner followed up with Dr. Rubenstein. The petitioner complained of continued pain in his neck with radiation down into his arm that was not helped by physical therapy. Dr. Rubenstein recommended a MRI of the cervical spine. (PX 1).

On February 25, 2013, the petitioner underwent a MRI of the cervical spine. The MRI report states, "Multilevel spondylotic changes of the cervical spine are seen. Multilevel spinal stenosis seen throughout the cervical spine however no gross cord compression, cord edema or cord myelomalacia is seen. This appears to be worst at the

level of C3-C4 where there is effacement of the ventral cervical spinal cord by the spondylotic ridge formation present. Multilevel neural foraminal narrowing and uncovertebral hypertrophy and facet disease is present." (PX 1).

On February 27, 2013, the petitioner was seen by Dr. Rubenstein who reviewed the MRI results. Dr. Rubenstein opined that the mild-to-moderate stenosis at multiple levels as well as foraminal stenosis most significantly at the C3-4 level was probably responsible for a lot of the radicular symptoms the petitioner was feeling. Dr. Rubenstein took the petitioner off work due to the threat of worsening his condition with his work duties and recommended epidural steroid injections. Dr. Rubenstein also found that the petitioner's condition was causally related to his work accident, stating "While I am sure some of the degenerative changes pre-existed his injury, he was previously asymptomatic, and I think that this has caused some inflammation of the soft tissues in addition to the degenerative changes that are causing increased compression on his nerves." (PX 1).

The petitioner was then seen by Dr. Anas Alzoobi at Health Benefits Pain Management on March 19, 2013. Dr. Alzoobi recommended physical therapy and that the petitioner be scheduled for epidural steroid injections. (PX 2).

On April 2, 2013 and April 16, 2013, the petitioner underwent cervical epidural steroid injections, performed by Dr. Alzoobi, who kept the petitioner on an off work status. (PX 2).

The petitioner returned to Dr. Rubenstein for a follow up on April 26, 2013. At that time, Dr. Rubenstein noted that the petitioner had gotten some relief from the injections. However, Dr. Rubenstein further stated, "With his spinal stenosis still, I am a little concerned ultimately that returning back to the environment he was working in could be risky and dangerous for him. As you are well aware, working in a prison with a lot of people puts him at risk for being assaulted and injured, and further injury to his neck could lead to significant downsides and even partial paralysis." Dr. Rubenstein recommended physical therapy for the neck and cleared the petitioner to return to work with restrictions of no lifting greater than 25 pounds in a safe environment where he is not at risk for being injured by the people around him. (PX 1).

On May 20, 2013, the petitioner was seen for a Section 12 examination by Dr. Michael Vender of Hand to Shoulder Associates at the request of the respondent, Illinois Department of Corrections (hereinafter IDOC). Dr. Vender noted that the petitioner's symptoms were consistent with the diagnosis of cervical spine disease with suspected irritation of cervical roots leading to cervical radiculitis and/or cervical radiculopathy. He also diagnosed ulnar impaction of both wrists along with right thumb carpal-metacarpal joint arthritis. He went on to state that he could not opine on causation for the petitioner's cervical radiculopathy. But, he opined that the ulnar impaction and thumb arthritis were not related to the petitioner's December 13, 2012 work accident. Dr. Vender further stated that he would not say the petitioner had reached MMI for his cervical spine issues. He found that the petitioner could return to work from the standpoint of his wrists, but deferred on his ability to work from a cervical perspective. (RX 5).

On May 25, 2013, the petitioner was seen for another Section 12 examination at the request of the respondent with Dr. Babak Lami. Dr. Lami opined that the petitioner had sustained only a neck sprain in his accident and that the degenerative changes in the cervical spine were due only to the petitioner's personal health. He further opined that the petitioner had reached MMI and that he could return to full duty work without restriction as a result of the December 13, 2012 work related accident. (RX 4).

On June 3, 2013, the petitioner was seen again by Dr. Rubenstein. Dr. Rubenstein had the opportunity to review the petitioner's Section 12 examination from Dr. Lami. Dr. Rubenstein then opined:

"I take issue with Dr. Lami's opinion for a number of reasons; patient was asymptomatic prior to his injury despite having preexisting cervical spondylolysis as mentioned in Dr. Lami's notes. As I mentioned previously, he has mild-to-moderate cervical stenosis, most significantly at the C3-4 level, and while I certainly agree with Dr. Lami that a lot of his cervical arthritic changes predated his injury, the fact that he was asymptomatic prior to the injury implies to me that there was some inflammatory component of the injury that occurred at that time that has increased his cervical radicular symptoms and nerve-related pain due to narrowing and compression of the nerves in the spinal canal. I think that his injury at the time of his workplace incident was more than just a simple cervical neck sprain as Dr. Lami mentions, but rather an injury that also created some swelling within the spinal canal which has caused increased pressure on his nerves and a lot of his radicular-type symptoms. While through medication and epidurals He has gotten somewhat better, he has not reached his pre-injury asymptomatic state and is concerned about reinjury while returning to work which is a concern that I share as well. As far as maximum medical improvement is concerned, I think at this point without further intervention he is at maximum medical improvement. I think he is still having some mild radicular symptoms as well as some cervical symptoms related to his degenerative changes and the aggravation of it at the time of his injury. I would classify this injury primarily as a significant aggravation of a preexisting condition rather than an entirely new injury, but at the same time I would not completely discount anything related to that as being outside the realm of his workplace injury since his symptoms were brought on and have not resolved fully due to the significant aggravation of his preexisting cervical spine degenerative condition. Indeed, since he is not fully recovered from his symptoms despite epidurals and medication, there is a possibility he is going to need some further and more extensive intervention in the form of surgery, possibly a decompression and fusion at certain levels in the cervical spine." (PX 1).

Dr. Rubenstein placed the petitioner on restrictions of no lifting greater than 25 pounds and no overhead work, with a note that the petitioner was to be off work if no light duty was available. (PX 1).

On September 16, 2013, the petitioner was seen by Dr. Rubenstein. At that time, Dr. Rubenstein stated "With the MRI findings and patient's continued cervical spine symptoms and those in his upper extremities, I do not think it is likely that he is going to be able to return back to the type of work he was doing previously." He further opined that there was no additional treatment for the petitioner that would improve his condition. The petitioner was considered to be at maximum medical improvement, absent future surgical intervention if his cervical condition worsened. (PX 1).

At trial, it was noted for the record that if Dr. Rubenstein had been called to testify and a proper hypothetical question had been asked of him, he would testify that the current condition of ill-being in the petitioner's cervical spine was causally related to his December 13, 2012 work accident and that all care and treatment for the petitioner's arms, hands and cervical spine had been reasonable and necessary.

At trial, the petitioner testified that the Dwight Correctional Center had closed in May of 2013. During its closing, although the petitioner was still off work, he was informed by the State that he would be transferred to the Pontiac Powerhouse. The petitioner testified that he has never been back to work following the closure of the Dwight facility. He did contact an employee of IDOC at the Pontiac facility in human resources. He requested work

within his physical restrictions from IDOC. No light duty work has been offered to him by the IDOC, or any State agency. The petitioner testified that he understands the regular job in Pontiac to be heavy physical work, operating and maintaining a high pressure facility.

The petitioner further testified that neither the job of chief engineer at Dwight, nor the job at the Pontiac Powerhouse, fall within the physical restrictions placed on him in June of 2013.

Since being placed on permanent restrictions, the petitioner has conducted a self-directed job search, as detailed in Petitioner's Exhibit 12. The petitioner has received no job offers during this search. No vocational assistance has been offered by the respondent in this case.

Petitioner remains and is still an employee of the State of Illinois.

Prior to December 13, 2012, the petitioner had no history or neck pain or neck treatment. The petitioner had never been disabled from his job prior to December 13, 2012. The petitioner has never been pain free since December 13, 2012.

The petitioner further testified about his current condition. The petitioner's hands are constantly swollen and sore. The petitioner experiences soreness and pain in his neck, with tingling when performing certain movements. For example, the petitioner will experience shooting pain in the neck while he is opening a jar. The petitioner described one particular incident when he was attempting to assist his elderly mother out of a chair and felt pain in his hands and neck. The petitioner experiences pain in his hands, neck and in the back or his arms when stretching or reaching. When active, the petitioner experiences pain in the neck, arms and hands the next day. The petitioner has been trying to live his life within the restrictions placed on him by Dr. Rubenstein.

The petitioner tries to avoid taking medication, but will take Ibuprofen approximately every other day, sometimes up to 6 doses in a day.

CONCLUSIONS OF LAW

I. On the issue of whether an accident occurred that arose out of and in the course of the petitioner's employment by respondent, (C), the arbitrator hereby finds:

After reviewing all evidence and testimony in this matter, the arbitrator finds that an accident did occur that arose out of and in the course of the petitioner's employment by respondent.

The arbitrator finds that the petitioner's testimony regarding his December 13, 2012 work accident to have been honest and credible. Furthermore, the petitioner's testimony is supported by the records in this case.

On December 14, 2012, the petitioner filled out a CMS accident report, detailing his accident from the day prior. In that report, the petitioner details that he injured himself while attempting to empty a 40 gallon garbage can and had to catch the weight of the can as it slipped off the bin. (PX 15). This report matches the testimony of the petitioner regarding his December 13, 2012 accident.

In addition, throughout the petitioner's treating records, including during his first visit to Dr. Rubenstein on December 21, 2012, the petitioner provides the exact same accident history.

The respondent in this case has presented no testimony or evidence to dispute the honest and credible testimony of the petitioner or the history contained in the accident report and medical records.

Petitioner has also been recognized by the State as employee of the year (2011) and for saving hundreds of thousands of dollars in money for the prison system. (PX 18).

The arbitrator finds the petitioner to be highly credible. Nothing was offered by respondent to suggest otherwise.

Therefore, the arbitrator finds that an accident did occur that arose out of and in the course of the petitioner's employment by respondent on December 13, 2012.

II. On the issue of whether the petitioner's current condition of ill-being is casually related to his work injury, (F), the arbitrator hereby finds:

The arbitrator hereby finds that the current conditions of ill-being in the petitioner's cervical spine, arms and hands is causally related to his December 13, 2012 work injury.

After reviewing all records and evidence in this matter, the arbitrator finds the causation opinion of Dr. Rubenstein to be more persuasive than the opinion of Dr. Lami.

The records reflect that he petitioner has suffered from cervical, arm and hand pain since the time of this accident. On February 27, 2013, after reviewing the petitioner's cervical MRI which revealed mild-to-moderate stenosis at multiple levels as well as foraminal stenosis most significantly at C3-4, Dr. Rubenstein opined, "While I am sure some of the degenerative changes pre-existed his injury, he was previously asymptomatic, and I think that this has caused some inflammation of the soft tissues in addition to the degenerative changes that are causing increased compression on his nerves." Dr. Rubenstein explained that this was the cause of the petitioner's radicular symptoms. (PX 1).

The respondent relies on the opinion of Dr. Lami to dispute causal connection in this case. However, the arbitrator finds the opinion of Dr. Lami to be flawed. Dr. Lami does not even address the possibility of an aggravation of the preexisting condition of the petitioner's cervical spine. Both Dr. Lami and Dr. Rubenstein agree that he petitioner had preexisting degenerative changes in his cervical spine; however, it is clear from the records the petitioner had no symptoms in his cervical spine prior to December 13, 2012 and his cervical spine has never been pain free after December 13, 2012. The fact that Dr. Lami does not so much as mention the possibility of an aggravation of that condition exhibits the weakness of his opinion.

In contrast, the opinion of Dr. Rubenstein, the petitioner's treating physician, is well-reasoned and credible. After reviewing Dr. Lami's opinion, Dr. Rubenstein explained, "while I certainly agree with Dr. Lami that a lot of his cervical arthritic changes predated his injury, the fact that he was asymptomatic prior to the injury implies to me that there was some inflammatory component of the injury that occurred at that time that has increased his cervical radicular symptoms and nerve-related pain due to narrowing and compression of the nerves in the spinal canal." (PX 1).

The respondent has offered no evidence or testimony to indicate that the petitioner ever had cervical spine pain or disability prior to December 13, 2012. Furthermore, the records reflect that after December 13, 2012, the petitioner has had continuous symptoms and limitations due to his cervical injury. It is clear from the records and testimony in this case that Dr. Rubenstein was accurate in stating that the petitioner's December 13, 2012 injury

caused an inflammatory response which has increased the narrowing of the spinal canal, compressing the nerves, and causing cervical radicular symptoms.

Even Dr. Vendor diagnosed a cervical radiculopathy. Dr. Vendor gave no opinion on causation of the radiculopathy, and only released petitioner to work for the hands. What is glaringly obvious is Dr. Vendor diagnosed the same condition as Dr. Rubenstein, while Dr. Lami fails to address it at all.

Furthermore, the petitioner testified that the pain he felt in his arms and hands following his December 13, 2012 accident was different than any he had ever felt before. The respondent has offered no persuasive evidence or testimony to dispute the causal connection between the current condition of ill-being in the petitioner's arms and hands and his December 13, 2012 accident.

Based upon the above reasoning, the arbitrator hereby finds that the current conditions of ill-being in the petitioner's cervical spine, arms and hands, including the cervical radiculopathy and physical restrictions due to his cervical condition are causally related to his December 13, 2012 work accident.

III. On the issue of outstanding medical bills, (J), the arbitrator hereby finds:

As detailed above, the arbitrator has found that the petitioner sustained an accident that arose out of and in the course of his employment by respondent on December 13, 2012 and that the current conditions of ill-being are causally related to that accident.

The arbitrator further finds that all care and treatment received by the petitioner in this matter has been reasonable and necessary. The respondent has offered no evidence or testimony to dispute the reasonableness or necessity of the treatment offered and administered by the petitioner's treating physicians. Furthermore, it was noted on the record that if Dr. Rubenstein had been called to testify and a proper hypothetical question had been asked of him, he would testify that the current condition of ill-being in the petitioner's cervical spine was causally related to his December 13, 2012 work accident and that all care and treatment for the petitioner's arms, hands and cervical spine had been reasonable and necessary.

The arbitrator hereby finds that all care and treatment admini8stered to the petitioner in this matter has been reasonable and necessary.

The petitioner has presented outstanding medical bills related to his care and treatment in this case as follows:

Provider	Beginning	Ending	Total Charges	WC Paid	WC Adj	Balance
Associated Pathologist of Joliet	12/26/2012	12/26/2012	$378.00	$0.00	$0.00	$378.00
Franciscan Alliance	1/28/2013	1/28/2013	$269.51	$0.00	$0.00	$269.51
Health Benefits	3/19/2013	4/16/2013	$8,712.17	$0.00	$0.00	$8,712.17
Illinois Bone & Joint	12/21/2012	9/16/2013	$1,128.00	$64.86	$76.14	$987.00
Open MRI of Plainfield	2/25/2013	5/16/2013	$3,269.74	$0.00	$0.00	$3,269.74
Provena St Joseph Medical Center	12/26/2012	12/26/2012	$2,625.50	$0.00	$0.00	$2,625.50
Summit Pharmacy	12/26/2012	12/26/2012	$96.85	$0.00	$0.00	$96.85
Balance			$16,479.77	$64.86	$76.14	$16,338.77

Therefore, the arbitrator hereby orders respondent to pay outstanding medical bills in the amount of $16,338.77 pursuant to Sections 8(a) and 8.2 of the Act.

IV. On the issue of temporary total disability benefits, (L), the arbitrator hereby finds:

Following the petitioner's December 13, 2012 accident, he was seen by Dr. Rubenstein and underwent a course of physical therapy at Provena St. Joseph Medical Center. During that treatment, the petitioner remained working.

On February 25, 2013, the petitioner underwent a cervical MRI, ordered by Dr. Rubenstein, due to his continued cervical symptoms.

After reviewing the MRI results on February 27, 2013, Dr. Rubenstein stated, "While I am sure some of the degenerative changes pre-existed his injury, he was previously asymptomatic, and I think that this has caused some inflammation of the soft tissues in addition to the degenerative changes that are causing increased compression on his nerves" and placed the petitioner on an off-work status. (PX 1).

Following February 27, 2013, the petitioner has not been cleared to return to full duty work for his cervical spine by any physician other than Dr. Lami. As detailed above, the arbitrator has found the opinions of Dr. Rubenstein more persuasive than those of Dr. Lami and hereby adopts Dr. Rubenstein's opinions regarding the petitioner's ability to return to work.

On June 3, 2013, Dr. Rubenstein placed the petitioner at MMI with restrictions of no lifting over 25 pounds and no work above shoulder level. (PX 1).

There is no evidence in the record that respondent has ever offered light duty work to the petitioner. The arbitrator further notes that in Respondent's own Exhibit 10, the at the end of February 2013, the petitioner is noted to have been on a "service connected sick leave" as signified by a "sc" on his time sheet. The petitioner is then noted to have a leave of absence through May 2013. From April 1 2013 through the end of August 2013, the respondent's internal documentation primarily shows the petitioner off on a service connected sick leave/leave of absence. It is worth note that the respondent's own documentation shows that the petitioner was off due to service connected reasons. (RX 10).

The petitioner has undergone a self-directed job search since August 23, 2013, as detailed in Petitioner's Exhibit 12, but has received no offers of employment. (PX 12).

Based upon the above-reasoning, the arbitrator hereby orders respondent to pay temporary total disability benefits of $1,287.87 per week for 33.14 weeks, commencing February 27, 2013 through October 16, 2013, as provided in Section 8(b) of the Act.

Respondent shall be given a credit of $15,086.86 for TTD paid in this matter.

V. On the issue of whether penalties or fees should be imposed on respondent, (M), the arbitrator hereby finds:

The arbitrator has reviewed all records and evidence in this matter and finds that the respondent has had no reasonable basis for withholding temporary total disability or medical benefits due to the petitioner in this case.

The respondent's reliance on the opinion of Dr. Lami, who does not even address a possible aggravation of the petitioner's cervical degeneration, was completely unreasonable. The petitioner's treating physician, Dr. Rubenstein clearly and repeatedly explained that the petitioner's December 13, 2012 injury caused inflammation in the petitioner's cervical spine which further compressed the spinal canal and pressed upon the petitioner's nerves, causing cervical symptoms. Dr. Lami wholly ignored the facts of this case, including that the petitioner was completely asymptomatic prior to his December 12, 2013 work injury, but has never been asymptomatic since the injury. Clearly, based upon the records and testimony in this case, the opinion of Dr. Lami is unreliable. Even Dr. Vendor diagnosed the cervical radiculopathy while Dr. Lami, in essence, ignored the injury and ignored the significance of the abnormal cervical MRI that explains petitioner's radicular symptoms.

The respondent's reliance upon Dr. Lami to deny this case under these facts is not reasonable.

In denying compensation, the respondent has not met the burden of demonstrating a reasonable belief that its denial of liability was justified under the circumstances, as required by *Continental Distrib. Co. v. Indus. Comm'n*, 98 Ill.2d 407, 456 N.E.2d 847 (1983), *Bd. of Educ. v. Indus. Comm'n*, 93 Ill.2d 20, 442 N.E.2d 883 (1982) ("*Norwood*" case) and *Bd. of Educ. v. Indus. Comm'n*, 93 Ill.2d 1, 442 N.E.2d 861 (1982) ("*Tully*" case). In *Tully*, the Illinois Supreme Court held that where a delay has occurred in payment of workers' compensation benefits, the employer bears the burden of justifying the delay and the standard he is held to is one of objective reasonableness in his belief. Thus it is not good enough to merely assert honest belief that the employee's claim is invalid or that his award is not supported by the evidence; the employer's belief is "honest" only if the facts that a reasonable person in the employer's position would have would justify it. 42 N.E.2d at 865. The Court added in *Norwood* that the question whether an employer's conduct justifies the imposition of penalties is a factual question for the Commission. The employer's conduct is considered in terms of reasonableness. 442 N.E.2d at 885. Moreover, the Appellate Court has noted that the burden of proof of the reasonableness of its conduct is upon the employer. *Consol. Freightways, Inc. v. Indus. Comm'n*, 136 Ill.App.3d 630, 483 N.E.2d 652, 654 (1985); accord, *Ford Motor Co. v. Indus. Comm'n*, 140 Ill.App.3d, 488 N.E.2d 1296 (1986).

Based on the failure of respondent to present a reasonable basis for withholding TTD benefits and not paying for medical treatment, there has been an unreasonable delay of payment. There has been a failure to pay compensation in accordance with the provisions of Section 8, paragraph (b) of the Act (relating to payment of TTD), which is presumed to be an unreasonable delay. 820 ILCS 305/19. There has also been an unreasonable delay in payment of medical bills, without adequate basis for that decision. The arbitrator finds the respondent's behavior to be unreasonable, vexatious and solely for the purpose of delay.

Accordingly, the Arbitrator finds that Respondent shall pay penalties under §19(k) in the amount of **$21,965.96**, representing fifty percent of the total amount due to date in TTD and medical expenses. The arbitrator calculated this amount as follows:

TTD Due: $1,287.87 per week for 33.14 weeks = $42,680.01 total TTD due
$42,680.01 total TTD due – Respondent's TTD credit of $15,086.86 = $27,593.15 unpaid TTD

$27,593.15 unpaid TTD + $16,338.77 unpaid medical = $43,931.92

$43,931.92 / 2 = **$21,965.96 due pursuant to Section 19(k)**

SECTION19(L)

Petitioner is due 33.14 weeks of TTD benefits from February 27, 2013 through October 16, 2013. The respondent in this matter paid TTD benefits which equate to approximately 11.72 weeks' worth of TTD benefits. Therefore, there are TTD benefits unpaid for a period of 21.42 weeks. The Arbitrator therefore finds, pursuant to Section 19(l) of the Act, that Respondent shall pay the sum of **$4,500.00**, constituting $30.00 per day for each day during the 150 days of non-payment of TTD.

SECTION 16

Pursuant to §16 of the Act, the Arbitrator finds that Respondent shall pay attorneys' fees calculated upon twenty percent of the unpaid TTD to date; twenty percent of the unpaid medical expenses to date and twenty percent of the §19(k) award. Accordingly, Respondent shall pay the sum of $56,960.55 in attorneys' fees, with the remainder of Petitioner's attorneys' fees, if any, to be paid by Petitioner to his attorneys. This award was calculated by the arbitrator as follows:

$21,965.96 in Section 19(k) + $42,680.01 in unpaid TTD, as detailed above + $16,338.77 = $80,984.74

$80,984.74 x .2 = **$16,196.95 in Section 16 fees**

STATE OF ILLINOIS)
) SS.
COUNTY OF)
SANGAMON

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☐ PTD/Fatal denied
- ☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

IWCC,
Petitioner,

vs.

NO: 11 INC 237
11 INC 238

14IWCC0268

Gilbert E. Blaum, individually and
sole LLC Member of Home Decor & More, LLC,
Individually and as President of
Macarthur Family Medical Health Center,
Respondent.

DECISION AND OPINION ON INSURANCE NON-COMPLIANCE

This claim was set for hearing before the Illinois Workers' Compensation Commission on December 19, 2013 pursuant to Section 4(c) of the Illinois Workers' Compensation Act. The Commission, after reviewing the entire record, finds Respondent was not in compliance with Section 4 of the Act, for the reasons set forth below.

FINDING OF FACTS AND CONCLUSIONS OF LAW

The Commission finds:

1. Joe Stumph, a compliance investigator for the Illinois Workers' Compensation Commission, testified on May 2, 2011 he received a complaint from Joe Jones, an employee of Home Decor & More in Springfield, Illinois which stated he had been injured while at work and while the employer had initially handled his medical bills they have has since refused to talk to him or pay for any medical procedures. Mr. Jones, the employee, said that the business is owned by Dr. Gilbert Blaum and run by

Susan Defraties, his girlfriend. Mr. Jones stated that he believes the business which has two locations has no insurance. Mr. Jones filed Claim No. 11 WC 13791 with an injury date of October 13, 2010. Mr. Stumph testified he checked the insurance status of Home Décor & More located at 2025 South Macarthur Blvd. Springfield Illinois, phone number 217-670-1310, sole LLC Member Gilbert E. Blaum DOB: 7/9/36, FEIN #271766382 and found no current workers' compensation insurance for the business. He also checked Macarthur Family Health Center SC located at 2025 S. Macarthur Blvd. Springfield IL. 62704 President Gilbert E. Blaum DOB 7/9/36 FEIN#272398541 and found no current workers' compensation insurance for that business as well.

2. Mr. Stumph testified he checked in accurint and found Home Décor & More LLC 2025 S. Macarthur Blvd. Springfield Illinois 62704. Dun and Bradstreet listed a start date of 2010 and listed Susan Defraties as owner and Gilbert Blaum as contact. He also found in accurint a Home Decor & More, LLC located at 1943 West Monroe Street Springfield IL. 62704 with a start date according to Dun and Bradstreet of 2010. Lastly, he checked accurint for Macarthur Family Health Center SC 2025 S. Macarthur Blvd. Springfield IL. 62704 with a state date according to Dun and Bradstreet of 2010. A check in ICNI found an injury Case No. 11 WC 013791 for Joe N. Jones with a date of injury of 10/13/10 and a docket date of 6/6/11 before Arbitrator White. The Illinois Secretary of State's home page showed Home Decor & More, LLC certificate of good standing file date of 1/27/10 listing Gilbert E. Blaum as Agent and sole LLC Member and Macarthur Family Health Center SC certificate of good standing file date of 1/27/10 listing Gilbert E. Blaum as Agent/President. A check in ICNI found no claims for the business. A check in POC found there was insurance coverage from 10/18/10 to 5/6/11, which was cancelled for non-payment of the premium and no coverage from 5/7/11 to present for Home Décor & More. A check in POC for Macarthur Blvd. found there was no insurance coverage from 4/21/10 to present. A check of IDES find Macarthur Family Health Center SC with a liability date of 5/1/10 listing one employee for the 3rd month of the 4th quarter of 2010.

3. From May 2, 2011 through May 6, 2011 Mr. Stumph called both the Monroe and Macarthur Blvd. stores and Dr. Blaum's office and was told Sue was not in; at the doctor's office, he obtained a recorded message stating the answering machine was full and could not accept messages; he received no answer and he was told the doctor was with a patient. On May 6, 2011, Mr. Stumph called the Macarthur store and informed Brianna that he would be forced to seek a stop work order for the business if Sue did not contact him. He left his name and number. Later that day Mr. Stumph said he received a called from Sue Defraties who said she was very busy and was

going to contact him as soon as possible. Mr. Stumph explained who he was and why he was calling. Sue said Dr. Blaum was the owner of the doctor's office which had 2 employees and both furniture stores had 3 employees between them. The Macarthur store was opened in March of 2010 and the Monroe store was opened in October of 2010. Sue said she would contact the insurance agent about the workers' compensation insurance.

4. Case No. 11 INC 00237 was opened for a business in violation of 820 ILCS 305/3 #15 and Case No. 11 INC 00238 was opened for a business in violation of 820 ILCS 305/3 # 9 & 15. On May 9, 2011, a letter of inquiry and notice of non-compliance was sent regular mail.

5. A check of POC found policy 00 WC 87360 through Pekin Insurance Company effective 10/18/10 had been reinstated effective 5/6/11. A check of POC finds policy 00 WC 91595 through Pekin Insurance Company effective 7/25/10 to 7/25/12.

6. On October 25, 2011, Mr. Stumph spoke with Dr. Gilbert Blaum. Dr. Blaum agreed to a $5,000.00 fine to be paid in payments. Mr. Stumph sent him a settlement agreement via regular mail. On December 5, 2011, he received an e-mail from Assistant Attorney General Paula Velde stating the injury case was going to trial on December 8, 2011 in Springfield, IL. On December 6, 2011 Mr. Stumph received a phone message from Attorney Apfelbaum stating the settlement would fail unless the compliance department agreed to no fine for the non-compliance. He also stated that the doctor had had his medical license suspended. The attorney for the Commission said he would not agree to join the injury and non-compliance cases and he would not agree to waive any fine for non-compliance. On August 8, 2012, Mr. Stumph received an e-mail from Attorney Apfelbaum with bankruptcy papers attached showing Dr. Blaum had filed for chapter 7 bankruptcy.

7. On August 10, 2012, after the settlement agreement was not returned and no payments were made, Mr. Stumph petitioned for a formal hearing on September 27, 2012 before Commissioner Basurto. On August 13, 2012, Mr. Stumph went to Attorney Mike Logan's office at 607 E. Adams Street Springfield, IL. 62701 who is the representative for Dr. Blaum and he agreed to accept service of the formal hearing for Dr. Blaum. On September 18, 2012 Attorney Logan called stated he didn't believe the insurance compliance division could proceed with the formal hearing due to Dr. Blaum filing bankruptcy. He was told that the formal hearing was separate and not dischargeable under the law. He was told that the formal hearing would go ahead and a fine would be asked for during the hearing. The claim was continued multiple times for hearing.

8. Mr. Stumph testified that after the last hearing date, he and Assistant Attorney General Richard Glisson went to Dr. Blaum's residence and personally served Gilbert Blaum with the notice of December 19, 2013 hearing date. Subsequently, on October 10, 2013 he e-mailed Attorney Logan copies of the notice of the hearing date for December 19, 2013. Mr. Blaum did not appear for the December 19, 2013 hearing. Proof of service for the hearing date was given by Mr. Stumph.

9. A Review hearing was held on December 19, 2013. At that time the Commissioner presiding over the review hearing and having called out his name and having received no answer, it was noted that Dr. Blaum was not in attendance and the hearing proceeded. It was further noted that Dr. Blaum is individually and sole LLC Member of Home Décor & More LLC 11 INC 00237 as well as Agent and sole LLC Member and Macarthur Family Health Center SC 11 INC 00238 and both cases would proceed to hearing.

10. Mr. Stumph testified at the December 19, 2013 hearing that of today's date both businesses are closed and there is no workers' compensation insurance for either business.

11. Mr. Stumph submitted into evidence at the December 19, 2013 Review Hearing the following documents which were essentially the same for both claims:

PX1, insurance non-compliance report;

PX2, letter of inquiry and notice of non-compliance to both businesses;

PX3, Illinois Department of Employment Security (IDES) information;

PX4, Illinois Secretary of State Corporate File;

PX5, Self-Insurance certification

PX6, Illinois Department of Revenue document;

PX7, National Council on Compensation Insurance (NCCI) on-line inquiry;

PX8, IWCC information on 11 WC 013791 & Division of Professional Regulation document;

PX9, 10/25/11 Letter and settlement agreement;

PX10, 9/27/12 Notice of Hearing ;

12. Mr. Stumph testified in regard to Macarthur Family Health Center, 11 INC 00238 it has been in non-compliant from April 21, 2010 to July 24, 2011, which is 460 days x $500.00 totaling $230,000. The annual premium of $1,911.00 on the insurance that he did have divided by 365 days would mean that he paid $5.24 a day. If this is times by 460 days of non-compliance this would equal an additional $2,410.40 for a total fine of $232,410.40.

13. Mr. Stumph testified in regard to the Home Décor & More business, 11 INC 00237 it has not been non-compliant from January 27, 2010 to October 17, 2010 a total of 264 days and May 7, 2011 to December 31, 2011 for an additional 239 days for a total number of days equaling 503 days at $500.00 a day which would total $251,500.00. The annual premium of $1,230.00 on the insurance that he did have divided by 365 days would mean that he paid $3.37 a day. If this is times by 503 days of non-compliance this would equal an additional $1,695.11 for a total fine of $253,195.11. This is what the insurance compliance division would like the Commission to award against this business for its failure to have Illinois Workers' Compensation insurance pursuant to the law of the state.

Based on the above evidence along with the testimony of Mr. Stumph, the Commission finds Respondent, Mr. Blaum individually and as sole LLC member of Home Décor & More, LLC and individually and as Agent and sole LLC Member and Macarthur Family Health Center SC was not in compliance with the dates testified to by Mr. Stumph and awards $485,605.51 against Dr. Blaum, Individually and against Home écor & More, LLC and Macarthur Family Health Center SC for its failure to comply with Section 4 of the Illinois Workers' Compensation Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that a penalty of $485,605.51 is assessed against Respondent, Dr. Blaum, Individually and against Home Décor & More, LLC and Macarthur Family Health Center SC, for its failure to comply with Section 4 of the Illinois Workers' Compensation Act.

DATED: APR 09 2014

R:12 /19/13

MB/jm

43

Mario Basurto

David L. Gore

Stephen J. Mathis

STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Morris,
Petitioner,

vs.

NO: 11 WC 22011

14IWCC0269

Icon Mechanical,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, medical expenses, prospective medical expenses, causal connection, employer employee relationship, jurisdiction and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 27, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 0 9 2014

MB/mam
O:2/27/14
43

Mario Basurto

David L. Gore

Stephen Mathis

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

MORRIS, MICHAEL
Employee/Petitioner

Case# 11WC022011

14IWCC0269

ICON MECHANICAL
Employer/Respondent

On 6/27/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4463 GALANTI LAW OFFICES PC
DAVID GALANTI
PO BOX 99
EAST ALTON, IL 62024

0439 ROUSE & CARY
TRACEY PLYMELL
10733 SUNSET OFFICE DR STE 410
ST LOUIS, MO 63127

14IWCC0269

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [ ] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Michael Morris
Employee/Petitioner

v.

Icon Mechanical
Employer/Respondent

Case # 11 WC 22011

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah L. Simpson**, Arbitrator of the Commission, in the city of **Herrin**, on **June 21, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [x] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. [x] Was there an employee-employer relationship?
C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. [ ] What was the date of the accident?
E. [ ] Was timely notice of the accident given to Respondent?
F. [x] Is Petitioner's current condition of ill-being causally related to the injury?
G. [ ] What were Petitioner's earnings?
H. [ ] What was Petitioner's age at the time of the accident?
I. [ ] What was Petitioner's marital status at the time of the accident?
J. [x] Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. [x] Is Petitioner entitled to any prospective medical care?
L. [x] What temporary benefits are in dispute?
[ ] TPD [ ] Maintenance [x] TTD
M. [ ] Should penalties or fees be imposed upon Respondent?
N. [ ] Is Respondent due any credit?
O. [ ] Other _____

FINDINGS

On the date of accident, **March 1, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did not*** exist between Petitioner and Respondent.

In the year preceding the injury, Petitioner earned **$146.34**; the average weekly wage was **$1331.20**.

On the date of accident, Petitioner was **51** years of age, **married** with **2** dependent children.

ORDER

Petitioner failed to prove by a preponderance of the evidence that on March 1, 2011, an Employee-Employer relationship existed between the Petitioner and the Respondent therefore benefits are denied.

Because Petitioner failed to prove that an employee-employer relationship existed on March 1, 2011, all other issues are moot.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Deborah L. Simpson
Signature of Arbitrator

June 26, 2013
Date

ICArbDec19(b)

JUN 27 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Michael Morris,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**No. 11 WC 22011**
	)	
Icon Mechanical,	)	
	)	
Respondent.	)	
	)	

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that the Petitioner gave Respondent notice of an accidental injury sustained by the Petitioner on March 1, 2011, that Petitioner alleges arose out of and in the course of the employment of the Petitioner by the Respondent, within the time limits stated in the Act.

At issue in this hearing is as follows: (1) On March 1, 2011, were the Petitioner and the Respondent operating under the Illinois Worker's Compensation or Occupational Diseases Act and was their relationship one of employee and employer; (2) On March 1, 2011, did the Petitioner sustain accidental injuries or was he last exposed to an occupational disease that arose out of and in the course of employment; (3) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (4) Is the Respondent liable for the unpaid medical bills contained in Petitioner's exhibit number 12; (5) Is the Petitioner entitled to TTD from May 25, 2011, through June 21, 2012; and (6) Is the Petitioner entitled to any future medical treatment.

STATEMENT OF FACTS

The Petitioner testified that he was fifty-two years old and had been a journeyman sheet metal worker for thirty to thirty-one years. He stated that March 1, 2011, was the first day on the job for him at the Respondent's place of business. He testified that he was there to meet his foreman. He stated that he had been there the day before when his foreman had taken him through the shop showing him what machines they had, where the machines were located and how the machines worked.

On March 1, he arrived at about 6:45 a.m. It was a safety meeting day and Petitioner sat in on the safety meeting. He believes there were three or four other guys there at the meeting with him. He believes that he did some insulating duct work while on the floor and that during the safety meeting he was asked if he had been drug tested yet. He told them he wasn't. He was then sent for a drug test.

Respondent sent Petitioner to the Gateway clinic for his drug test. It is located in Granit City, which is where Petitioner lived and Respondent had its' place of business. The Petitioner testified that he knew where the clinic was but he does not recall how he went there. He knows that he got on Madison Ave at some point because he knows that the clinic is on Madison. He was travelling from one parking lot to another. He testified that in the closer parking lot, "the lights went out and I lost five weeks." Petitioner also testified that he does not remember anything other than his truck rocking, hitting his head and nothing. He does not recall going to Gateway Regional Hospital, or being moved to St. Louis University Hospital.

Petitioner knows that he was sent to St. Mary's for rehabilitation and that he stayed for about three weeks.

Petitioner testified that he did not have any previous neck problems before the accident.

Petitioner testified that currently he experiences constant pain. He cannot do anything fast or strenuous. He does not have full range of motion in his neck. His pain is in his shoulders and goes down into his arms. He states that he has to think before he acts. He did not have these problems before the accident. He stated that all the doctors, Gornet, Boutwell and Crane are recommending surgery in his neck since everything else has failed.

On cross examination Petitioner stated that he is still a member of the sheet metal workers union and that he is hired out of the union hall. Drug testing is required by the union before you can work. A positive test could be a reason for you not to get hired.

Petitioner also testified that he knows that he met Bob the first day he was there but it was a long time ago. He stated that he may have left early on February 28, but he does not know why he left early. He said it could have been because he had something with the kids that day. He does remember putting some fittings together and doing some duct work.

Petitioner testified that he met with Mike and two other guys for the safety meeting, he identified Respondent's exhibit number 6 as a document he initialed and signed regarding the topics that were covered that day. He identified his signature and his initials. Mike asked him if he had done everything, when he said no he had not had the drug test, Mike told him to go get the test and to come back when he was finished. He stated that he used his truck to drive to the clinic for the test. He said he went straight from Icon to Gateway; he was not given anything else to do between Icon and Gateway by Icon. He has no memory of the accident or what happened, he has read the police reports and they do not jog his memory. He has no memory of time after the accident for five weeks.

The Respondent called Mr. Robert Belobraydic to testify. Mr. Belobraydic is the shop foreman for the Respondent. He testified that his duties included controlling man power, assigning work, keeping the employees from just standing around and measuring and fabricating.

New employees see Mr. Belobraydic first. He conducts orientation which is the same for everyone. Mr. Belobraydic is a member of the union. He met the Petitioner for the first time on February 28, 2011. The Petitioner started about 7:00 a.m. that day. Mr. Belobraydic took the Petitioner through the shop, like he does with all new employees. They go over shop safety and a list of all the machines, and then he shows them how to operate the various machines. Respondent has 20 machines that are explained to them and that the Respondent makes sure they know how to safely operate. He stated that Respondent has some newer machines that other shops do not have. The orientation takes about one hour to one hour and fifteen minutes, plus the paperwork. Mr. Belobraydic testified that the Petitioner told him that he had to leave early that day because he said he had water in his basement. Petitioner left before the first break at 9:30 a.m. Petitioner was paid for two hours of work that day pursuant to the union agreement.

Although the responsibility for drug testing is his, Mr. Belobraydic does not remember telling the Petitioner to go for the drug test the first day, he remembers that the Petitioner had to leave that morning because of problems with water at home. Mr. Belobraydic stated that several months after the accident he received a phone call from the Petitioner asking him to keep Petitioner's tools on the side, that he would send his brother to pick them up.

The Respondent also called Michael Buchana to testify. Mr. Buchana has been employed by Respondent for five years as the Safety Director. He was working as the safety director on March 1, 2011. As the safety director he is responsible for orientation of new employees, safety inspections and worker's compensation cases.

Mr. Buchana did not know the Petitioner prior to February 28, 2011. He met the Petitioner for the first time on March 1, 2011, in his capacity as safety director. He does not know why he did not meet the Petitioner when he was at the facility on February 28, 2011, but he knows that the Petitioner left in the early morning that day.

When Mr. Buchana met with the Petitioner on March 1, 2011, it was about 8:30 a.m. They went through the safety work sheet, including the shop, the worksite and the safety rules. He had the Petitioner review them and then sign off on them. He also got his W-4 information at that time. Mr. Buchana identified Respondent's exhibit number 6 as the cover sheet for the W4 and the safety sheet and other documents from the safety meeting between him and the Petitioner.

According to Mr. Buchana, the safety meeting on March 1, 2011, was with Mr. Morris alone. He was the only new hire. Mr. Buchana noticed that the Petitioner appeared to be nervous and a bit "shaky" that day. It is the policy of the company that offers of employment are subject to passing a drug and alcohol screen. The company has a zero tolerance policy towards substance abuse in the workplace. He testified that after the safety meeting the Petitioner was supposed to go for his drug test.

They finished the safety meeting some time after 9:00 a.m., it usually takes from thirty minutes to an hour. When the meeting was concluded, the Petitioner was sent to Gateway Clinic

for his drug test. He was not given a specific appointment time nor was he given a time to report back to work. The clinic is less than a mile from the shop; it takes about two minutes to get there from the shop. The Petitioner was not given a specific route to take to get there. Mr. Buchana identified Respondent's exhibits 2a, 2b, 2c and 2d as depicting routes that could be taken from the shop to the clinic with directions, time and distances. Each of which is less than a mile and according to the computer could be driven in less than two minutes. Mr. Buchana tried them out and was able to drive each in three minutes or less. The Petitioner was not given any errands to run for or by the Respondent when he was sent for his drug test. Driving for the Respondent is not included in the job duties for the position that the Petitioner had applied for and would have gotten if he had passed the drug test.

Mr. Buchana had an appointment outside the facility that morning, so when the meeting between he and the Petitioner was concluded he left to go to his car. According to Mr. Buchana, the Petitioner and he walked out of the building at the same time, going to their respective vehicles. It was 9:30 a.m. when they left.

According to Mr. Buchana the drug test must be passed before anyone is hired. When potential employees are sent for drug testing it is not compensated time, they are not on the clock because the company has no control over their time. The clinic is a walk-in clinic and the majority of the time the test results are obtained instantly, unless the clinic has to send them out for some reason. Had the Petitioner returned from the clinic with a clean test, he would have gone on the clock at that point. The Petitioner never returned after leaving for the drug test. They heard later that he was involved in an automobile accident. Mr. Buchana does not recall any construction work being done on any of the streets that are in either of the routes between the clinic and the shop at the time of the accident.

Mr. Buchana admitted that the Petitioner was paid for two hours on Feb. 28, 2011, and for three hours on March 1, 2011, because the union contract requires it. It is show up time.

Respondent's exhibit number 6 is identified as Morris Information Sheet. It contains five pages that were identified by both the Petitioner and Mr. Buchana as the documents that Petitioner filled out and went over with Mr. Buchana during the safety meeting. The second page is identified as the Substance Abuse Policy. The policy states that "To prevent drug / alcohol abuse from entering the work force a pre-employment urine screening to detect the use of illegal substances, the misuse of prescription medications and / or the abuse of alcohol will be required for all prospective employees." (R. Ex. 6) It states further that "all offers of employment will be made subject to the results of a drug test." (R. Ex. 6) The zero tolerance policy also includes conditions under which current employees can also be required to submit to drug and alcohol screening, such as when there is an accident at work, on the job. It provides for random drug testing as well. (R. Ex. 6)

The police report, (P. Ex. 1, R. Ex. 1), indicates that the accident happened at 10:00 a.m., it also indicates that the Petitioner who was driving the motor vehicle that drove over a curb, struck a sign, an occupied motor vehicle and two parked, unoccupied motor vehicles appeared to be having a seizure after his pick-up truck came to a stop. Witnesses who described the accident said the Petitioner's vehicle was travelling west on 21st street, turning north onto Madison Avenue when the accident occurred. According to the maps contained in R. Ex. 2a, 2b, 2c and 2d, the clinic is east of the shop, not west.

At the time of the motor vehicle accident the Petitioner sustained multiple injuries and was in a coma for some time. (P. Ex. 2-9, R. Ex. 7) According to Carl A. Freeman, M.D., the Petitioner was admitted to the hospital because of a questionable seizure. After assessment, neurologists felt there was no seizure, and that the decreased level of consciousness was from alcohol abuse. (P. Ex.3, 5, p. 1) The doctors agree that the Petitioner's current medical condition is as result of the accident that he was involved in on March 1, 2011, and that he requires additional treatment, including surgery. (P. Ex. 2-9, R. Ex. 7)

CONCLUSIONS OF LAW

An injury arises out of one's employment if it has its' origin in a risk that is connected to or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *Technical Tape Corp. vs IndustrialCommission,*58 Ill. 2d 226, 317 N.E.2d 515 (1974) "Arising out of" is primarily concerned with the causal connection to the employment. The majority of cases look for facts that establish or demonstrate an increased risk to which the employee is subjected to by the situation as compared to the risk that the general public is exposed to.

The burden is on the party seeking the award to prove by a preponderance of credible evidence the elements of the claim, particularly the prerequisites that the injury complained of arose out of and in the course of the employment. *Hannibal, Inc. v. Industrial Commission,* 38 Ill.2d 473, 231 N.E.2d 409, 410 (1967)

An injury is accidental within the meaning of the Worker's Compensation Act when it is traceable to a definite time, place and cause and occurs in the course of the employment unexpectedly and without affirmative act or design of the employee. *Matthiessen & Hegeler Zinc Co. v Industrial Board,* 284 Ill. 378, 120 N.E. 2d 249, 251 (1918)

Under the Illinois Workers' Compensation Act, a "traveling employee" is defined as an employee who is required to travel away from the employer's premises in order to perform his job. *Chicago Bridge and Iron, Inc. v. Industrial Commission*, 248 Ill.App.3d 687, 694, 618 N.E.2d 1143 (5th Dist. 1993).

As a general rule, accidents that occur while an employee is going to or from his or her place of employment do not arise out of and in the course of employment. *Commonwealth Edison Co. v. Industrial Comm'n*, 86 Ill. 2d 534, 537-38 (1981); *Quarant*, 38 Ill. 2d at 491; *Urban*, 34 Ill.2d at 161.

On March 1, 2011 were the Petitioner and the Respondent operating under the Illinois Worker's Compensation or Occupational Diseases Act and was their relationship one of employee and employer?

In general an employee is defined as any person who is in the service of another under any contract for hire. In this case, the Petitioner admitted that it is a requirement of the union hall through which he is hired that before union members can work at a job they must undergo drug and alcohol testing, and that failure to pass the drug and alcohol screening can prevent them from being hired for a job. The Petitioner further admitted that he had not completed the drug and alcohol screen on February 28, 2011, or March 1, 2011, when he appeared at Respondent's place of business for the orientations that were conducted by Mr. Belobraydic and Mr. Buchana.

The Petitioner identified documents that he went over during the safety meeting / orientation, with Mr. Buchana, including the Substance Abuse Policy, that were contained in Respondent's exhibit number 6. That policy clearly states that a pre-employment urine screening must be completed for all prospective employees before they are hired. Petitioner admitted that he did not complete the urine test prior to his orientation/safety meeting with Mr. Buchana and that he was told to go get it done and come back so that he could go to work. Both Mr. Buchana and Mr. Belobraydic testified that before anyone could begin working for Respondent they had to pass the drug test.

It is uncontested that the Petitioner was in his own vehicle, had not been given a specific route to take to go for the test, had not been given a specific time to appear for the test, and that he was not running any errands for the Respondent at the time of the accident. The job that the Petitioner was being considered for did not include driving for the Respondent as one of his duties. Petitioner, although he does not remember the route he took, claims he drove straight to the hospital from the Respondents place of business, less than one mile away. It took him thirty minutes to do so and according to the reports of the witnesses to the accident he was travelling west, not east. The Petitioner never testified that he took the drug test or that he passed the drug test, and did not produce any records of having taken or passed the test.

Petitioner and Mr. Buchana testified that the Petitioner did receive a pay check from the Respondent for 5 hours of work; two hours worked on Feb. 28, 2011, and 3 hours worked on March 1, 2011. Mr. Buchana explained that because Petitioner showed up, and participated in the orientation around the shop, they were required to pay him for the time by the union. He described it as show up pay. According to Mr. Buchana that is why he was paid for 3 hours on March 1, 2011, as well. He showed up, participated in the orientation, filled out paper work in order to begin working for Respondent, but was unable to start that day because he had not completed his drug test. He testified further that had the Petitioner passed the test and returned, he could have clocked in and worked that day.

The Petitioner has not proven by a preponderance of the evidence that an employer-employee relationship existed between the Petitioner and the Respondent on March 1, 2011.

On March 1, 2011 did the Petitioner sustain accidental injuries or was he last exposed to an occupational disease that arose out of and in the course of employment? Is the Petitioner's current condition of ill-being causally connected to this injury or exposure? Is the Respondent liable for the unpaid medical bills contained in Petitioner's exhibit number 12? Is the Petitioner entitled to TTD from May 25, 2011 through June 21, 2012? Is the Petitioner entitled to any future medical treatment?

Because no Employee-Employer relationship existed between the Petitioner and the Respondent at the time the Petitioner was in the automobile accident the other issues are moot.

ORDER OF THE ARBITRATOR

Petitioner failed to prove by a preponderance of the evidence that on March 1, 2011, an Employee-Employer relationship existed between the Petitioner and the Respondent therefore benefits are denied.

Deborah L. Simpson
Signature of Arbitrator

June 26, 2013
Date

STATE OF ILLINOIS	)	☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF SANGAMON	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Greg Boltz,

Petitioner,

vs.

NO: 09 WC 00715

141WCC0270

International Paper,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, prospective medical expenses, causal connection and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 9, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $3,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: APR 09 2014

Mario Basurto

David L. Gore

Stephen Mathis

MB/mam
O:2/27/14
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

BOLTZ, GREG
Employee/Petitioner

Case# **09WC000715**

14IWCC0270

INTERNATIONAL PAPER
Employer/Respondent

On 9/9/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.05% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2046 BERG & ROBESON
STEVE W BERG
1217 S 6TH ST PO BOX 2485
SPRINGFIELD, IL 62705

0180 EVANS & DIXON LLC
KIM M PARKS
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

14IWCC0270

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION
19(b)

GREG BOLTZ
Employee/Petitioner

v.

INTERNATIONAL PAPER
Employer/Respondent

Case # 09 WC 00715

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Springfield**, on **July 12, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☒ Is Petitioner entitled to any prospective medical care?

L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other

14IWCC0270

FINDINGS

On the date of accident, **January 29, 2006**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned $**46,106.08**; the average weekly wage was $**922.12**.

On the date of accident, Petitioner was **48** years of age, **married** with **3** dependent children.

Respondent has paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

Respondent is entitled to a credit for any medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner reasonable and necessary medical expenses in the amount of $3,486.60, subject to the Fee Schedule as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize and pay for the surgery recommended by Dr. Jones and all reasonable costs associated with that surgery.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Henry Lindsey
Signature of Arbitrator

9.4.13
Date

ICArbDec19(b)

SEP 9 - 2013

GREG BOLTZ
V.
INTERNATIONAL PAPER

09 WC 00715

The Arbitrator finds:

Petitioner, 48 years of age, was employed by Respondent on January 29, 2006, as a master mechanic. On that date Petitioner was involved in an undisputed accident. Petitioner testified he was on the upper deck of a printing press standing on a ladder four or five feet in the air when a fork truck malfunctioned and he jumped from the ladder in order to avoid being hit. Petitioner testified he dove over a tool box and landed flat on the left side of his body. Petitioner testified his left arm was extended and he was leaning towards the left. Petitioner testified it "hurt like hell" and he testified he experienced pain in his left butt cheek and left shoulder.

Petitioner presented to Carle Foundation Physician Services Occupational Medicine on January 30, 2006. Petitioner described an injury occurring the day before. The report notes "He [Petitioner] reports that he was putting in a 6 unit stack weighing 1,000 pounds into a truck. He was standing on the 4th rung of a ladder to do this. The unit slipped and fell towards him. He used his left arm to try to push it away. He fell off the ladder and landed on his left buttock. He presents today with complaints of left buttock pain, as well as bilateral shoulder soreness and left elbow soreness." (PX 3) Overhead range of motion was limited due to pain. Petitioner's left elbow and buttock were tender with palpation. Petitioner was diagnosed with bilateral shoulder pain, a soft tissue injury to the left buttock and a left elbow contusion. Petitioner was advised to use ice and Ibuprofen; however, Petitioner reported he preferred to use aspirin. Petitioner was given work restrictions and was to return for a follow-up visit in a few days, or sooner, if necessary. The note is signed by Janet Baker, APN. (PX 1)

Petitioner returned for follow-up care on February 2, 2006. At that time he was examined by Dr. Bettina Collin, who recorded the following history: "The patient reports that on Monday he was on a ladder about 4 feet off the ground and the support that was holding up the roof they were working on broke. Everything started to

slide in the direction of where the patient was with his ladder. In order to avoid being hit by a ton of material, he jumped off the ladder and fell to the ground and landed on his left side hurting his left shoulder and left hip. He reports that he did not pass out. He actually rolled out of the way of the debris falling on the ground where he lay." (PX 3) Petitioner reported he had been up and around but experiencing more pain in his left shoulder, elbow, and hip, along with a bruise "in that area." Petitioner's primary complaints that day were stiffness and pain in his left shoulder. Physical examination revealed tenderness on palpation around the deltoid muscle, mainly anteriorly and posteriorly, but no tenderness on the biceps insertion or deltoid muscle insertion. He had full range of motion of his left elbow and left wrist albeit some occasional crepitus when his elbow was flexed and extended. Bilaterally, Petitioner had normal capillary refill, normal radial pulses, and normal sensation bilaterally. He had a large purplish hematoma on the left buttock area. An x-ray of the left shoulder and left elbow was ordered. Petitioner was also told to call back if he started getting stiff in the next two weeks and the doctor noted he might benefit from physical therapy. Petitioner was instructed to return to the clinic "prn" if there was any worsening of his symptoms. Work restrictions were given. (PX 3)

X-rays were taken of Petitioner's left shoulder on February 2, 2006 and revealed intact bony structures with well maintained joints and no sign of any fracture or acute joint injury. X-rays of Petitioner's elbow taken the same day were also normal. (PX 3)

Petitioner continued working for Respondent and sought no further treatment until February 8, 2007, a little over a year after his accident and his last visit with Occupational Medicine.

Petitioner presented to Dr. Dycoco on February 8, 2007. The doctor's note indicates "The patient is complaining of pain on the right shoulder. Claims he was injured a year ago at work, he over-stretched his right shoulder. Since then he has had intermittent, persistent pain. He was seen by a company physician. X-rays did not show any findings. He still has some pain on the left shoulder, especially on trying to lift something. Sometimes has limitation of motion, especially on hyper-extension. He wants to have an MRI but the company

physician advised him to see his family physician. Will refer to orthopedic surgeon of possible rotator cuff injury. He is otherwise doing well." (PX 4)

Petitioner was next examined by Dr. Jones on February 20, 2007. The level of pain is recorded as "10 at its worst." (PX 5) The history of the accident indicates "standing on step ladder et fork truck raised up et fell toward pt. pt jumped onto concrete landing on Lt side to avoid being hit." (PX 5) On March 1, 2007, Petitioner underwent an injection in the left anterior glenohumeral joint space. (PX 5)

On March 2, 2007, an MRI of Petitioner's left shoulder with contrast was performed. The impression was a partial articular surface tear, distal supraspinatus, estimated at less than 50%, and tendinosis, distal infraspinatus, versus old strain injury. The labral signal was normal. (PX 5)

Dr. Jones' note of March 6, 2007 indicates he reviewed the MRI and recommended a steroid injection and, if there was no change, to proceed with arthroscopic surgery.

The doctor's note from March 7, 2007 indicates Petitioner was notified to advise him that Dr. Jones had reviewed the MRI of his left shoulder and noted no RCT (rotator cuff tear). A steroid injection was recommended. Petitioner wished to proceed with the injection and an appointment was given for March 13, 2007. (PX 5)

Petitioner returned to Dr. Jones on March 13, 2007 and underwent the injection. (PX 5)

Dr. Jones' notes indicate on March 27, 2007, Petitioner was contacted and reported the injection did help and he was to call as needed. (PX 5)

Petitioner signed his Application for Adjustment of Claim on May 31, 2007 claiming he injured his left shoulder and arm on/about January 8, 2006. (AX 2)

Petitioner underwent no treatment between March 13, 2007 and November of 2007.

According to Dr. Jones' office notes Petitioner called on November 7, 2007 asking for an appointment for his left shoulder and reporting it felt like his shoulder had popped out of joint and then popped back in.

Petitioner was given an appointment for November 15, 2007 which he did not keep. (PX 5) At arbitration Petitioner testified he did not recall having scheduled an appointment or missing same in November of 2007.

On March 10, 2011, over five years after the work accident, Petitioner was seen by Dr. Kohlmann. At that time he complained of pain in the posterior shoulder below the spine of the scapula near the level of the glenohumeral joint or medial to that. He reported the symptoms had been intermittent since the injury. Petitioner reported to Dr. Kohlmann that he built cars for a living at home which involved some lifting, and that he didi other things that aggravated it, like recently trying to lift his deer stand into the truck which hurt. Petitioner reported viewing the current problem as a continuation of the problem he had from the day of his injury. Physical examination revealed well developed shoulder muscles bilaterally with no muscle atrophy anywhere in the left posterior shoulder. Strength was equal and his only complaint of pain was in the posterior shoulder. There was no clicking, popping or catching, and no bony tender spots anywhere in the left shoulder. There was also no shoulder instability. (PX 6)

An MRI of Petitioner's left shoulder was performed on May 5, 2011. The MRI revealed partial tears SST involving the articulating fibers. Since the previous examination, there was now greater than 70% tear of the articular fibers with several bursal fibers remaining. A small through-and-through tear of the SST could be excluded by MRI arthrogram if clinically warranted. (PX 6)

Petitioner followed up with Dr. Kohlmann on May 19, 2011. On that date, Dr. Kohlmann recommended Petitioner return to the same facility that did the original MRI and arthrogram so the two studies could be compared. (PX 6)

An MRI arthrogram was performed on June 2, 2011. Dr. Kohlmann reviewed the results and indicated in his note of June 30, 2011, that Petitioner was in no hurry to have aggressive treatment. At that time, Petitioner did not even wish to try a cortisone shot. (PX 6)

In his report of September 8, 2011, Dr. Kohlmann indicated he reviewed the MRI of Petitioner's left shoulder done on June 2, 2011 and compared it to the prior MRI done five to six years ago. Dr. Kohlmann

indicated "They looked the same to me." (PX 6) Dr. Kohlmann indicated there was no full thickness cuff tear and there was no evidence for even really serious bursitis. (PX 6) A subdeltoid steroid injection was performed on that date.

Petitioner was next seen by Dr. Jones on January 10, 2012 at which time he continued to complain of pain in the left shoulder. Dr. Jones noted moderate to severe osteoarthritis on x-rays and informed Petitioner he should contact him if he wished to proceed with the surgery. (PX 6) That was the last date Petitioner was seen for treatment.

Petitioner was seen by Dr. Milne at the request of Respondent on January 15, 2013. Dr. Milne's history indicated Petitioner was probably five feet off the ground on a ladder at the time of the injury and he jumped off to avoid being hit by the deck. He reported landing on his outstretched arm. Petitioner reported having a third MRI but Dr. Milne noted there was no record of a third study. Dr. Milne's examination revealed the left shoulder was without edema or erythema. Passive range of motion was full and he had pain with Speed's testing. He had a positive Hawkin's test and no pain with O'Brien's testing. Radial pulse was 2+ and equal bilaterally and sensation was grossly intact to light touch. The right side was free from abnormality. X-rays of the left shoulder taken by Dr. Milne showed acromioclavicular joint arthrosis. Dr. Milne's diagnosis was left shoulder partial thickness rotator cuff tear, possible superior labral tear, left shoulder impingement syndrome, and left shoulder mild to moderate acromioclavicular joint arthrosis. Dr. Milne initially indicated it was his opinion the work-related injury was at least an aggravating factor in Petitioner's current complaints, if not the primary and prevailing factor; however, after being asked to re-review the records, Dr. Milne indicated that given the significant gaps in Petitioner's treatment, both between 2006 and 2007, and also between 2007 and 2011, during which Petitioner did not seek treatment and was active with businesses away from his full-time employment with Respondent, and engaged in hobbies such as hunting, Dr. Milne indicated he felt Petitioner likely suffered a shoulder contusion at the time of his injury and went back to an asymptomatic shoulder for long periods of time. For that reason, he indicated he did not believe a significant structural abnormality

occurred at the time of his initial injury and therefore he did not feel there was a direct causal relationship between any currently recommended treatment and the work injury of January 29, 2006. Respondent's attorney's correspondence to Dr. Milne setting forth the medical evidence was submitted as part of Petitioner's Exhibit 9. The letter refers to a business listed as Boltz Lathe & Mill Services & Custom Automotive Fabrication and references pictures of numerous deer heads mounted on the wall. There is also a reference to Petitioner selling a car on e-bay and killing and harvesting several deer in 2008 and 2010. Those activities were admitted to by Petitioner at the time of trial.

Petitioner submitted an initial opinion regarding causation from Dr. Jones dated March 6, 2012 which indicates "His pain has persisted since his injury on January 29, 2006. I do not have any other information that he has had shoulder pain or treatments prior to this incident." (PX 8) On February 14, 2013, Dr. Jones indicated "In regards to his shoulder problem requiring interventions to include conservative management as well as the recommended arthroscopic evaluation, I do feel that his injury at the time of work could have caused or aggravated a pre-existing condition to require this. The patient did not, to my knowledge, have any symptoms prior to this incident." (PX 8)

At the time of arbitration Petitioner amended his Application for Adjustment of Claim, without objection, to reflect an accident date of January 29, 2006. (AX 2)

Petitioner denied any problems with his left shoulder prior to his work accident.

Petitioner testified that he was sent to Carle Foundation Physician Services at the request of Respondent and that the information contained in the initial treating medical records (Carle Foundation Physician Services Occupational Medicine) is not consistent with what he told the nurse and is not consistent with what happened. Petitioner testified he was not given a prescription for physical therapy as far as he could recall. Petitioner further testified that for several months he could not raise his left arm above shoulder level. Petitioner testified it was very sore and it kept "popping out of place."

Petitioner testified his shoulder has never been pain free since the accident of January 29, 2006.

Petitioner testified he went in several times to his employer and reported continual pain. He also testified that he was eventually told to stop coming in and reporting his pain. According to Petitioner he went in to his employer and asked about seeing a doctor because his shoulder was no better and "that's when things started." Petitioner testified he was told his case was "over" and he had to see a doctor on his own. Petitioner explained that he then went to his family doctor, Dr. Dycoco, in February of 2007. Dr. Dycoco then referred him to Dr. Tyler Jones. Petitioner testified that when he was examined by Dr. Jones, there was a "dent" in the back of his shoulder near the top; however, that dent is better now. According to Petitioner, Dr. Jones ordered an MRI of his left shoulder followed by a steroid injection which only afforded him about one week of relief. Petitioner's symptoms continued and Dr. Jones recommended surgery. Petitioner testified he called Dr. Jones' office on November 7, 2007 indicating he was still in pain and wanted to proceed with surgery. He did not recall an appointment being scheduled for November 15th as he was on vacation at that time.

Petitioner testified he continued to work thereafter with ongoing symptoms in his left shoulder. Petitioner testified he has not had surgery although it has been recommended. He testified it is now time to have the surgery because of the pain. Petitioner testified he is left-hand dominant.

Petitioner testified that he was accompanied by a safety person, Scott Fisher, when he went to Dr. Kohlman, Respondent's company doctor, in March of 2011. Petitioner denied any new injuries to his left shoulder prior to that appointment. He testified that his pain never stopped nor did it improve throughout the foregoing time period.

Petitioner testified he formerly had a business involving the building/rebuilding of cars. He testified he shut the doors about four years ago or approximately 2009. Petitioner denied injuring his left shoulder while engaged in activities associated with that business (cutting, welding, and fabricating of pro street cars).

Petitioner acknowledged he is a deer hunter and uses both a bow and gun. He holds the stock of his hunting rifle with his right shoulder and holds the bow with his right hand. Petitioner denied injuring his left shoulder while hunting.

Petitioner testified that when he rolls over at night he must hold his arm in order to roll over. He denied being able to throw a softball or football hard. Petitioner described a "toothache pain" in his left shoulder and the inability to lift like he formerly did. Petitioner testified there are certain motions/tasks at work that he will not perform. Finally, Petitioner described himself as "hard headed" and wanting to put off surgery because he has been reluctant to proceed with it. Petitioner denied any new injuries to his left shoulder since his last office visit with Dr. Jones.

On cross-examination Petitioner testified to hip, shoulder, and elbow complaints at his February 2, 2006 office visit. Petitioner also testified that the office visit with Dr. Dycoco on February 8, 2007 was for left shoulder complaints, not his right shoulder. Petitioner denied every having any right shoulder complaints.

On further cross-examination Petitioner acknowledged selling a car (an El Camino) in January of 2007. Petitioner worked on the car in 2006 and information pertaining to it is found in RX 1. Petitioner testified that he rarely works on vehicles after his work because he is too tired. He may work on them on his days off and he believes he easily put 80 hours into the El Camino. Petitioner acknowledged hunting and fishing since 2006 without needing any pain medication.

Petitioner also testified on cross-examination that he has to raise his left arm above his shoulder to perform lots of work activities. He acknowledged using ladders at home and putting lights on a tree every year during the holidays using a pole with a hook on the end. Petitioner testified his shoulder has always bothered him both at work and in his personal activities.

No depositions were taken by either party.

The issues in dispute are causal connection, past medical services and prospective medical care.

The Arbitrator concludes:

1. Causal Connection.

While there are some discrepancies between Petitioner's account of what he told early medical providers and what is contained in those office notes themselves, Respondent does not dispute accident and its causation

defense appears centered on Petitioner's gaps in treatment, outside activities, and Petitioner's credibility regarding his ongoing complaints and symptoms. At the outset the Arbitrator concludes that Petitioner was a credible witness. He was very candid in acknowledging his activities outside of work and what he notices about his left shoulder and when. The bottom line is that Petitioner injured his left shoulder in an undisputed accident, His reluctance to have surgery and his ability to continue working and living despite ongoing complaints of pain is believable. While time has passed and he has undergone gaps in treatment, his 2006 work accident continues to be a cause of his ongoing complaints and need for surgery. He has had no subsequent injuries. This is not a case in which a shoulder tear was noted years after the accident; rather, the tear was noted within a reasonable time after the accident and has increased/worsened over time and with activity, including work. Surgery was recommended for the partial tear early on and Petitioner chose to wait. The tear is still there and now Petitioner wishes to proceed with surgery. Petitioner's current condition of ill-being in his left shoulder is causally connected to his work accident of January 29, 2006. In support thereof, the Arbitrator notes, Petitioner's credible testimony, a chain of events, and the more credible opinion of Dr. Jones over that of Dr. Milne. Dr. Milne originally opined that Petitioner's condition was causally related to the accident. It was only after being presented with additional information that he changed his opinion and even then he conditioned his changed opinion on the accuracy of the reported information. That information was not correct. Petitioner was not asymptomatic for long periods of time. The Arbitrator also notes that Petitioner's testimony regarding his multiple conversations with Respondent's representatives regarding his ongoing complaints and desire for treatment was not rebutted, further supports Petitioner's credibility, and provides a connective thread between Petitioner's accident and the 2007 MRI findings, despite no intervening treatment. While Dr. Dycoco's February of 2007 office visit contains a reference to the "right shoulder" a reading of the entire office allows one to reasonably infer that was a typographical error as the examination and findings noted in the note reference only Petitioner's left shoulder.

Petitioner's left elbow and buttocks contusions appear to have resolved.

2. Medical Expenses.

Petitioner's exhibit number 2 consists of medical bills submitted by Petitioner. The Arbitrator finds the bill from Dr. Tyler Jones, with an outstanding balance in the amount of $213.00 to be reasonable and necessary and related to Petitioner's accident. According to that bill, Petitioner has paid $65.00 himself and BCBS of Illinois has paid $147.00. The Arbitrator orders that Respondent pay the outstanding balance of $213.00 pursuant to the Fee Scheduled under the Illinois Workers' Compensation Act and to pay $65.00 to Petitioner for the bills that he paid himself and to satisfy any subrogation from BCBS for their payment to Dr. Jones. The bill from Decatur Memorial Hospital in the amount of $3,041.68 is found by the Arbitrator to be reasonable, necessary and related to Petitioner's injury and Respondent is ordered to pay that bill, pursuant to the Fee Scheduled under the Illinois Workers' Compensation Act, to Petitioner so he can pay the bill to Decatur Memorial Hospital. Additionally, Respondent is ordered to pay the sum of $171.92 to Petitioner for his direct payments to Decatur Memorial Hospital as outlined on that bill The bill with Dr. Kohlman showing a balance of $60.00 is found to be reasonable, necessary and related to Petitioner's injury and Respondent is ordered to pay that bill pursuant to any contract they may have with their plant physician, Dr. James Kohlman and if no specific contract exists, then pursuant to the fee schedule under the Illinois Workers' Compensation Act.

3. Prospective Medical

Dr. Jones has recommended that Petitioner undergo surgical intervention to his left shoulder and the Petitioner has indicated that he is desirous of having that surgery so he can hopefully see some improvement in his shoulder condition.(PX5;8) Dr. Milne also was of the opinion that Petitioner would need surgical intervention.(PX9) Therefore, the Arbitrator concludes that the recommended surgery is a reasonable and necessary treatment mode to attempt to cure Petitioner of his condition of ill-being and orders Respondent to pay all reasonable costs, pursuant to the fee schedule of the Illinois Workers' Compensation Act, for all treatment associated with the Petitioner's recommended surgery and recovery from the same.

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